

No. 15523

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United States  
Court of Appeals  
for the Ninth Circuit

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DANIEL L. ABDUL,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

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Transcript of Record

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Appeal from the United States District Court  
for the District of Hawaii.

FILE

AUG - 9 1957

PAUL P. O'BRIEN,



No. 15523

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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Honolulu, Hawaii.



In the United States District Court  
for the District of Hawaii

Cr. No. 11,072

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DANIEL L. ABDUL,

Defendant.

(Secs. 2707(b), 2707(c), IRC 1939), (Secs. 7202,  
7203, IRC 1954), (26 USC, Secs. 2707(b), 2707  
(c), 7202 and 7203)

INDICTMENT

Count I.

The Grand Jury Charges:

That during the period from October 1, 1953, to December 31, 1953, inclusive, Daniel L. Abdul was the president and general manager of Home Furniture Company, Limited, a corporation employing labor, with its principal place of business in the City and County of Honolulu, and by reason of such facts he was required under the provisions of the Internal Revenue Code and was under a duty to make a return of Federal Income Taxes withheld from wages and Federal Insurance Contributions Act Taxes; that said Daniel L. Abdul, during said period paid wages to the employees of said corporation which were subject to withholding of Federal

Income Taxes and Federal Insurance Contributions Act Taxes in the sum of \$2,987.58; that by reason of such facts the said Daniel L. Abdul was required after December 31, 1953, and on or before January 31, 1954, to file with the Director of Internal Revenue for the District of Hawaii at Honolulu, City and County of Honolulu, Territory of Hawaii, in the District of Hawaii, an Employers' Quarterly Federal Tax Return; and that said Daniel L. Abdul, well knowing his duty and obligation to make such return, did wilfully and knowingly fail to make to said Director or to any other proper officer of the United States said Employers' Quarterly Federal Tax Return, in violation of § 2707(b), Internal Revenue Code of 1939, 26 United States Code, § 2707(b).

### Count II.

#### The Grand Jury Further Charges:

That on or about the 31st day of January, 1954, in the District of Hawaii, Daniel L. Abdul, the identical person named in Count I of this Indictment, who was the president and general manager of Home Furniture Company, Limited, a corporation with its principal place of business in the City and County of Honolulu, and who as such was required under the provisions of the Internal Revenue Code and was under a duty to collect, account for and pay over Federal Insurance Contributions Act Taxes and Federal Income Taxes withheld from wages and who, during the 4th quarter of the year 1953 ending December 31, 1953, deducted and col-

lected from the total taxable wages of the employees of said corporation such taxes in the sum of \$2,987.58, did wilfully fail to truthfully account for and pay over to the Director of Internal Revenue for the District of Hawaii, or to any other proper officer of the United States, said Federal Insurance Contributions Act Taxes and Federal Income Taxes withheld from wages due and owing to the United States of America for said quarter ending December 31, 1953, in violation of § 2707(c), Internal Revenue Code of 1939, 26 United States Code, § 2707(c).

### Count III.

The Grand Jury Further Charges:

That during the period from January 1, 1954, to March 31, 1954, inclusive, Daniel L. Abdul, the identical person named in Counts I and II of this Indictment, was the president and general manager of Home Furniture Company, Limited, a corporation employing labor, with its principal place of business in the City and County of Honolulu, and by reason of such facts he was required under the provisions of the Internal Revenue Code and was under a duty to make a return of Federal Income Taxes withheld from wages and Federal Insurance Contributions Act Taxes; that said Daniel L. Abdul, during said period paid wages to the employees of said corporation which were subject to withholding of Federal Income Taxes and Federal Insurance Contributions Act Taxes in the sum of \$2,095.81; that by reason of such facts the said Daniel L.

Abdul was required after March 31, 1954, and on or before April 30, 1954, to file with the Director of Internal Revenue for the District of Hawaii at Honolulu, City and County of Honolulu, Territory of Hawaii, in the District of Hawaii, an Employers' Quarterly Federal Tax Return; and that said Daniel L. Abdul, well knowing his duty and obligation to make such return, did wilfully and knowingly fail to make to said Director or to any other proper officer of the United States said Employers' Quarterly Federal Tax Return; in violation of § 2707(b), Internal Revenue Code of 1939, 26 United States Code, § 2707(b).

Count IV.

The Grand Jury Further Charges:

That on or about the 30th day of April, 1954, in the District of Hawaii, Daniel L. Abdul, the identical person named in Counts I, II and III of this Indictment, who was the president and general manager of Home Furniture Company, Limited, a corporation with its principal place of business in the City and County of Honolulu, and who as such was required under the provisions of the Internal Revenue Code and was under a duty to collect, account for and pay over Federal Insurance Contributions Act Taxes and Federal Income Taxes withheld from wages and who, during the 1st quarter of the year 1954 ending March 31, 1954, deducted and collected from the total taxable wages of the employees of said corporation such taxes in the sum of \$2,095.81, did wilfully fail to truthfully account for

and pay over to the Director of Internal Revenue for the District of Hawaii, or to any other proper officer of the United States, said Federal Insurance Contributions Act Taxes and Federal Income Taxes withheld from wages due and owing to the United States of America for said quarter ending March 31, 1954, in violation of § 2707(c), Internal Revenue Code of 1939, 26 United States Code, § 2707(c).

Count V.

The Grand Jury Further Charges:

That during the period from April 1, 1954, to June 30, 1954, inclusive, Daniel L. Abdul, the identical person named in Counts I, II, III and IV of this Indictment, was the president and general manager of Home Furniture Company, Limited, a corporation employing labor, with its principal place of business in the City and County of Honolulu, and by reason of such facts he was required under the provisions of the Internal Revenue Code and was under a duty to make a return of Federal Income Taxes withheld from wages and Federal Insurance Contributions Act Taxes; that said Daniel L. Abdul, during said period paid wages to the employees of said corporation which were subject to withholding of Federal Income Taxes and Federal Insurance Contributions Act Taxes in the sum of \$1,794.36; that by reason of such facts the said Daniel L. Abdul was required after June 30, 1954, and on or before July 31, 1954, to file with the Director of Internal Revenue for the District of

Hawaii at Honolulu, City and County of Honolulu, Territory of Hawaii, in the District of Hawaii, an Employers' Quarterly Federal Tax Return; and that said Daniel L. Abdul, well knowing his duty and obligation to make such return, did wilfully and knowingly fail to make to said Director or to any other proper officer of the United States said Employers' Quarterly Federal Tax Return; in violation of § 2707(b), Internal Revenue Code of 1939, 26 United States Code, § 2707(b).

## VI.

### The Grand Jury Further Charges:

That on or about the 31st day of July, 1954, in the District of Hawaii, Daniel L. Abdul, the identical person named in Counts I, II, III, IV and V of this Indictment, who was the president and general manager of Home Furniture Company, Limited, a corporation with its principal place of business in the City and County of Honolulu, and who as such was required under the provisions of the Internal Revenue Code and was under a duty to collect, account for and pay over Federal Insurance Contributions Act Taxes and Federal Income Taxes withheld from wages and who, during the 2nd quarter of the year 1954 ending June 30, 1954, deducted and collected from the total taxable wages of the employees of said corporation such taxes in the sum of \$1,794.36, did wilfully fail to truthfully account for and pay over to the Director of Internal Revenue for the District of Hawaii, or to any other proper

officer of the United States, said Federal Insurance Contributions Act Taxes and Federal Income Taxes withheld from wages due and owing to the United States of America for said quarter ending June 30, 1954, in violation of § 2707(c), Internal Revenue Code of 1939, 26 United States Code, § 2707(c).

Count VII.

The Grand Jury Further Charges:

That during the period from July 1, 1954, to September 30, 1954, inclusive, Daniel L. Abdul, the identical person named in Counts I, II, III, IV, V and VI of this Indictment, was the president and general manager of Home Furniture Company, Limited, a corporation employing labor, with its principal place of business in the City and County of Honolulu, and by reason of such facts he was required under the provisions of the Internal Revenue Code and was under a duty to make a return of Federal Income Taxes withheld from wages and Federal Insurance Contributions Act Taxes; that said Daniel L. Abdul, during said period paid wages to the employees of said corporation which were subject to withholding of Federal Income Taxes and Federal Insurance Contributions Act Taxes in the sum of \$1,796.85; that by reason of such facts the said Daniel L. Abdul was required after September 30, 1954, and on or before October 31, 1954, to file with the Director of Internal Revenue for the District of Hawaii at Honolulu, City and County of Honolulu, Territory of Hawaii, in the

District of Hawaii, an Employers' Quarterly Federal Tax Return; and that said Daniel L. Abdul, well knowing his duty and obligation to make such return, did wilfully and knowingly fail to make to said Director or to any other proper officer of the United States said Employers' Quarterly Federal Tax Return; in violation of § 7203, Internal Revenue Code of 1954, 26 United States Code, § 7203.

Count VIII.

The Grand Jury Further Charges:

That on or about the 31st day of October, 1954, in the District of Hawaii, Daniel L. Abdul, the identical person named in Counts I, II, III, IV, V, VI and VII of this Indictment, who was the president and general manager of Home Furniture Company, Limited, a corporation with its principal place of business in the City and County of Honolulu, and who as such was required under the provisions of the Internal Revenue Code and was under a duty to collect, account for and pay over Federal Insurance Contributions Act Taxes and Federal Income Taxes withheld from wages and who, during the 3rd quarter of the year 1954 ending September 30, 1954, deducted and collected from the total taxable wages of the employees of said corporation such taxes in the sum of \$1,796.85, did wilfully fail to truthfully account for and pay over to the Director of Internal Revenue for the District of Hawaii, or to any other proper officer of the United States, said Federal Insurance Contributions Act

Taxes and Federal Income Taxes withheld from wages due and owing to the United States of America, for said quarter ending September 30, 1954, in violation of § 7202, Internal Revenue Code of 1954, 26 United States Code, § 7202.

### Count IX.

The Grand Jury Further Charges:

That during the period from January 1, 1955, to March 31, 1955, inclusive, Daniel L. Abdul, the identical person named in Counts I, II, III, IV, V, VI, VII and VIII of this Indictment, was the president and general manager of Home Furniture Company, Limited, a corporation employing labor, with its principal place of business in the City and County of Honolulu, and by reason of such facts he was required under the provisions of the Internal Revenue Code and was under a duty to make a return of Federal Income Taxes withheld from wages and Federal Insurance Contributions Act Taxes; that said Daniel L. Abdul, during said period paid wages to the employees of said corporation which were subject to withholding of Federal Income Taxes and Federal Insurance Contributions Act Taxes in the sum of \$1,601.69; that by reason of such facts the said Daniel L. Abdul was required after March 31, 1955, and on or before April 30, 1955, to file with the Director of Internal Revenue for the District of Hawaii at Honolulu, City and County of Honolulu, Territory of Hawaii, in the District of Hawaii, an Employers' Quarterly Fed-

eral Tax Return; and that said Daniel L. Abdul, well knowing his duty and obligation to make such return, did wilfully and knowingly fail to make to said Director or to any other proper officer of the United States said Employers' Quarterly Federal Tax Return; in violation of § 7203, Internal Revenue Code of 1954, 26 United States Code, § 7203.

### Count X.

The Grand Jury Further Charges:

That on or about the 30th day of April, 1955, in the District of Hawaii, Daniel L. Abdul, the identical person named in Counts I, II, III, IV, V, VI, VII, VIII and IX of this Indictment, who was the president and general manager of Home Furniture Company, Limited, a corporation with its principal place of business in the City and County of Honolulu, and who as such was required under the provisions of the Internal Revenue Code and was under a duty to collect, account for and pay over Federal Insurance Contributions Act Taxes and Federal Income Taxes withheld from wages and who, during the 1st quarter of the year 1955 ending March 31, 1955, deducted and collected from the total taxable wages of the employees of said corporation such taxes in the sum of \$1,601.69, did wilfully fail to truthfully account for and pay over to the Director of Internal Revenue for the District of Hawaii, or to any other proper officer of the United States, said Federal Insurance Contributions Act Taxes and Federal Income Taxes withheld from wages due

and owing to the United States of America for said quarter ending March 31, 1955, in violation of § 7202, Internal Revenue Code of 1954, 26 United States Code, § 7202.

### Count XI.

The Grand Jury Further Charges:

That during the period from April 1, 1955, to June 30, 1955, inclusive, Daniel L. Abdul, the identical person named in Counts I, II, III, IV, V, VI, VII, VIII, IX and X of this Indictment, was the president and general manager of Home Furniture Company, Limited, a corporation employing labor, with its principal place of business in the City and County of Honolulu, and by reason of such facts he was required under the provisions of the Internal Revenue Code and was under a duty to make a return of Federal Income Taxes withheld from wages and Federal Insurance Contributions Act Taxes; that said Daniel L. Abdul, during said period paid wages to the employees of said corporation which were subject to withholding of Federal Income Taxes and Federal Insurance Contributions Act Taxes in the sum of \$1,380.87; that by reason of such facts the said Daniel L. Abdul was required after June 30, 1955, and on or before July 31, 1955, to file with the Director of Internal Revenue for the District of Hawaii at Honolulu, City and County of Honolulu, Territory of Hawaii, in the District of Hawaii an Employers' Quarterly Federal Tax Return; and that said Daniel

L. Abdul, well knowing his duty and obligation to make such return, did wilfully and knowingly fail to make to said Director or to any other proper officer of the United States said Employers' Quarterly Federal Tax Return; in violation of §7203, Internal Revenue Code of 1954, 26 United States Code, §7203.

Count XII.

The Grand Jury Further Charges:

That on or about the 31st day of July 1955, in the District of Hawaii, Daniel L. Abdul who was the president and general manager of Home Furniture Company, Limited, a corporation with its principal place of business in the City and County of Honolulu, and who as such was required under the provisions of the Internal Revenue Code and was under a duty to collect, account for and pay over Federal Insurance Contributions Act Taxes and Federal Income Taxes withheld from wages and who, during the 2nd quarter of the year 1955, ending June 30, 1955, deducted and collected from the total taxable wages of the employees of said corporation such taxes in the sum of \$1,380.87, did wilfully fail to truthfully account for and pay over to the Director of Internal Revenue for the District of Hawaii, or to any other proper officer of the United States, said Federal Insurance Contributions Act Taxes and Federal Income Taxes withheld from wages due and owing to the United States of America for said quarter ending June 30, 1955, in vio-

lation of §7202, Internal Revenue Code of 1954, 26  
United States Code, §7202.

Dated: Honolulu, T. H., this 16 day of August,  
1956.

A True Bill

/s/ W. E. SHEEHAN,  
Foreman, Grand Jury;

/s/ E. D. CRUMPACKER,  
Asst. United States Attorney.

[Endorsed]: Filed August 16, 1956.

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[Title of District Court and Clause.]

**DEFENDANT'S REQUESTED  
INSTRUCTIONS**

No. 27

You are instructed that there is no law of the  
United States which requires a taxpayer to answer  
any question of an Internal Revenue Service agent.

Refused.

[Initialed] J. W.

No. 28

You are instructed that no taxpayer shall be  
subjected to unnecessary examination or investiga-  
tions, and only one inspection of a taxpayer's books  
of account shall be made for each taxable year

unless the taxpayer requests otherwise or unless the Secretary or his delegate after investigation, notifies the taxpayer in writing that an additional inspection is necessary.

Section 7605 (b) USCA.

Refused.

[Initialed] J. W.

No. 29

You are instructed that Mr. Abdul committed no offense by his failure to reply to a question asked by an agent or employee of the Internal Revenue Service; nor did he commit any offense by his failure to furnish any such agent or employee with any books or records that may have been asked for, and you are not to draw any inference adverse to the defendant from any such failure.

Refused.

[Initialed] J. W.

No. 30

The failure of Mr. Adbul to furnish an agent of the government with any books, records or other information does not constitute evidence of wilfulness.

Refused.

[Initialed] J. W.

## No. 37

You are instructed that before you can find the Defendant guilty of the charges contained in the indictment, you must first find, from the evidence, that he was wilful. The wilfulness required in a criminal action must be established by evidence that shows affirmative or positive acts on the part of the Defendant, that, in and of themselves, spell out, specifically, bad purpose or evil motive. If you do not find such specific acts in the evidence, then you must return a verdict of "Not Guilty."

Covered—refused.

[Initialed] J. W.

## No. 38

If you find that the filing of the returns and the payment of the taxes due were not delayed by Mr. Abdul with any bad purpose or evil motive on his part, then you must find him "Not Guilty."

Refused—Covered.

[Initialed] J. W.

## No. 40

If you find from the evidence that the Defendant did make all tax returns required of him, even though paid late, that he did keep accurate records; that he supplied the government agents with information requested even if delayed at times; that he did eventually pay the taxes due and that he truthfully accounted for his tax liability, then the

Defendant cannot have acted with bad purpose or evil motive, and if you so find from the evidence, then you must return a verdict of "Not Guilty."

Refused.

[Initialed] J. W.

No. 41

If you should find from the evidence that the defendant may have been impolite, crude, abrupt, trying or even irritating to any one or even all of the Internal Revenue Service employees and agents, none of these are evidence of bad purpose or of evil motive or of wilfulness on the part of the defendant.

Refused.

[Initialed] J. W.

No. 42

If you find that it was the intention of Mr. Abdul to pay the taxes due when sufficient funds were available, then you must find him "Not Guilty" of each and every count of the indictment.

Refused.

[Initialed] J. W.

No. 44

The question of wilfulness is a matter for you as jurors to determine. Now wilfulness is a state of mind, and it is not possible to look into a man's mind to see what went on. The only way that you have of arriving at the wilfulness of the defendant

in this case is for you to take into consideration all of the facts and circumstances shown by the evidence, including the exhibits, and determine from such facts and circumstances whether the defendant acted with criminal wilfulness at the time in question.

Covered—refused.

[Initialed] J. W.

No. 45

If you find from the evidence that the Defendant did disclose his true tax liability, then this is evidence that the necessary criminal wilfulness on his part was not present, and you must find him not guilty.

Refused.

[Initialed] J. W.

No. 46

Before you can find the Defendant guilty of wilfulness you must be certain that the evidence shows specific intent, that is, you must be able to point to the specific acts which constitute the acts of wilfulness; if you cannot do so, then you must find the Defendant "Not Guilty."

Covered—refused.

[Initialed] J. W.

## No. 48

You are instructed to disregard all of the testimony of the witness, James or Jimmy Walker.

Refused.

[Initialed] J. W.

## No. 54

You are hereby instructed that all testimony relative to the merchandising and advertising techniques of the Defendant and that all testimony relative to specific sales by Home Furniture Company, Limited, is irrelevant and shall be disregarded by you.

Refused.

[Initialed] J. W.

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[Title of District Court and Cause.]

## PLAINTIFF'S REQUESTED INSTRUCTIONS

## No. 7

You will note that Counts I, III, V, VII, IX, and charge the defendant with wilfully and knowingly failing to make quarterly Federal tax returns to the District Director, and Counts, II, IV, VI, VIII, X, and XII charge the Defendant with wilfully failing to truthfully account for and pay over to the Director the taxes for which such returns were required to be filed. The types of wilfulness involved in these two different charges are separate and dis-

tinct and I ask you to pay particular attention to me when I describe to you just what is meant in each instance: [Read 3.]

The word "wilful," as used in Counts I, III, V, VII, IX, and XI, that is, in failing to make a tax return, means with a bad purpose or without ground for believing that one's act is lawful, or without reasonable cause, or capriciously, or with a careless disregard whether one has the right so to act.

The word "wilful," as used in Counts II, IV, VI, VIII, X, and XII, that is, in failing to truthfully account for and pay over the taxes, means with knowledge of one's obligation to pay the taxes due, and with intent to defraud the government of that tax by any affirmative conduct, ~~the likely effect of which would be to mislead or to conceal.~~ [Further, with respect to these counts "wilfulness" implies bad faith and an evil motive.]<sup>1</sup>

With these two standards in mind, I further instruct you that the question of intent is a matter for you as jurors to determine, and as intent is a state of mind, and it is not possible to look into a man's mind to see what went on, the only way that you have of arriving at the intent of the Defendant in this case is for you to take into consideration all the facts and circumstances shown by the evidence, including the Exhibits, and determine from all such facts and circumstances what the intent of the De-

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<sup>1</sup>[Material in brackets appeared as an alteration in the original copy.]

fendant was at the time in question. Thus, direct proof of wilful or wrongful intent or knowledge is not necessary. Intent and knowledge may be inferred from acts and such inferences may arise from a combination of acts, although each act standing by itself may seem unimportant. These are questions of fact to be determined from all the circumstances.

Given as modified for objection?

[Initialed] J. W.

### No. 8

On the question of the intent involved in the alleged commission of the offenses charged in the Indictment, there are certain matters which you may consider as pointing to such intent on the part of the Defendant if you find that they exist in this case. These are general illustrations: His statements to others reflecting his attitude toward his tax obligations, failure to file the necessary returns, concealment of facts, false and contradictory statements on material matters to the officers of the Bureau of Internal Revenue during the course of the interview, suppression of evidence and failure to make books available to Internal Revenue Agents when requested, evasiveness when interviewed, inconsistent and contradictory statements and explanations made on the stand, showing book entries to inquiring agents which do not properly or fairly reflect the payment of taxes, filing of annual summaries of taxes withheld which misrepresent that

taxes have been paid and/or taking credit for such unpaid taxes on his personal income tax return, representations that no moneys were available to pay the taxes when due if such representations are unreasonable to you, failure to notify Internal Revenue Agents of disposition of assets of the corporation to others, use of currently available assets of the corporation for other purposes including loans and advances to the Defendant, the payment of salary to Defendant's wife for unsubstantial services to the corporation, and the payment of obligations of the corporation other than Federal Taxes at a time or times when such taxes were required to be held in trust for the United States and/or paid over to the District Director of Internal Revenue, and any conduct, the likely effect of which would be to mislead or to conceal. I give you these instances simply to illustrate the type of conduct from which you may infer the intent required in the wilful failure to file returns and the wilful failure to truthfully account for and pay over taxes withheld. And if you find that the tax evasion motive plays any part in such conduct, the offenses of wilful failure to truthfully account for and pay over taxes withheld as charged in Counts II, IV, VI, VIII, X, and XII may be made out even though the conduct I have mentioned might also serve some other purpose.

Refused.

[Initialed] J. W.

## No. 10

As I have mentioned to you, taxes withheld are required to be held in a special fund in trust for the United States. Thus, if you find that the Defendant has represented to you the defense of inability to pay, you may consider that as evidence of his wilfulness in failing to pay the taxes insofar as it indicates to you his acknowledgment of the dissipation of the trust fund and the breach of trust. On the other hand, if you find that there was money available to pay the taxes and that the taxes were in fact ultimately collected, you may consider that in determining whether his defense of inability to pay is a defense of any substance.

Refused.

[Initialed] J. W.

## No. 11

Every employer required to withhold and pay Income Taxes and every employer liable for Federal Insurance Contribution Act Taxes is required to keep detailed and accurate payroll records at a convenient and safe location accessible to Internal Revenue officers, and open for inspection at all times by such officers.

~~Any failure on the part of the Defendant to supply any information for the purposes of the computation, assessment, or collection of the taxes of Home Furniture Company, Ltd., involved in this case, which you find to be unjustified or inexcusable,~~

~~is a circumstance which may be considered in your determination of his guilt or innocence.~~

As modified. No objection.

[Initialed] J. W.

No. 18

Prior investigation to determine civil liability in order that the Government may assess and collect the taxes before the collection is jeopardized in any way does not preclude the Government from instituting further investigation and ultimately bringing criminal charges in connection with the same tax delinquencies.

Given.

[Initialed] J. W.

No. 22

The importance of your duties as jurors requires that you consider the right of the Government of the United States to have its laws properly executed, and that it is with you citizens selected from this District that finally rests the duty of determining the guilt or innocence of those accused of crime, and unless you do your duty you might just as well strike the laws from the statute books.

Given. No objection.

[Initialed] J. W.

[Title of District Court and Cause.]

COMMUNICATIONS BETWEEN COURT  
AND JURY

May we have a copy of your instructions for examination? If not, will you please read your instructions to us once more?

Thank you,

/s/ JAMES C. ZAVE,  
Foreman.

Your Honor:

A few members of the jury would like to have you read over the instructions again as to the word "wilful" pertaining to Counts 2, 4, 6, 8, 10 and 12.

Thank you,

/s/ JAMES C. ZAVE,  
Foreman.

Opened at 8:25 and message given to Judge Wiig over phone.

T.P.C.

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[Title of District Court and Cause.]

VERDICT

We, the Jury, duly empaneled and sworn in the above-entitled cause, do hereby find the Defendant, Daniel L. Abdul

As to Count I—Guilty.

As to Count II—Not Guilty.  
As to Count III—Guilty.  
As to Count IV—Not Guilty.  
As to Count V—Guilty.  
As to Count VI—Not Guilty.  
As to Count VII—Guilty.  
As to Count VIII—Not Guilty.  
As to Count IX—Guilty.  
As to Count X—Not Guilty.  
As to Count XI—Guilty.  
As to Count XII—Not Guilty.

as charged in the Indictment herein.

Dated: Honolulu, T. H., this 5th day of December,  
1956.

/s/ JAMES C. ZAVE,  
Foreman.

[Endorsed]: Filed December 5, 1956.

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[Title of District Court and Cause.]

#### MOTION FOR NEW TRIAL

The Defendant moves the Court to grant him a new trial for the following reasons:

- (1) The Court erred in denying Defendant's motion for acquittal made at the conclusion of the government's case.
- (2) The Court erred in denying defendant's motion for acquittal made at the conclusion of the evidence.

- (3) The verdict is contrary to the weight of the evidence.
- (4) The verdict is not supported by the evidence.
- (5) The Court erred in overruling the objections to the introduction of evidence relating to governmental procedures as testified by Mr. Mew.
- (6) The Court erred in overruling the objection to the introduction into evidence of the testimony of James or Jimmy Walker and in denying defendant's motion to strike all of the testimony of James or Jimmy Walker.
- (7) The Court erred in refusing to give Defendant's requested instruction No. 48 regarding the testimony of Mr. Walker.
- (8) The Court erred in not also giving Defendant's requested instruction No. 35 on the two occasions when the jury requested and they were instructed again on the subject of wilfulness.
- (9) The Court erred to the substantial prejudice of the Defendant, by carrying on an extensive examination of government witnesses.
- (10) The Court erred in allowing the introduction into evidence of income tax returns both of the corporation and of the Defendant personally for the years 1953, 1954 and 1955, and of the testimony relating thereto as this had no relevancy to the charges of the indictment.

(11) The Court erred in drawing a distinction for the jury in the instructions between the meaning of wilfulness as it pertained to the even numbered counts and as it pertained to the odd numbered counts of the indictment.

(12) The Court erred in instructing the jury as to the meaning of wilfulness as it pertained to the odd numbered or misdemeanor counts.

(13) The Court erred in admitting into evidence the testimony of Messrs. Filene and Stratton and Miss Burns relative to statements made to them by the defendant to the effect that he had mailed the returns or paid the taxes.

(14) The Court erred in allowing the Government to question the defendant concerning numerous business transactions such as collections of accounts receivable, preparation and signing of conditional sales contracts, advertising of merchandise, and others which were not relevant to the issues framed in the indictment.

Dated at Honolulu, T. H., this 14th day of December, 1956.

NATHANIEL FELZER,  
HOWARD K. HODDICK and  
ALLEN R. HAWKINS,

By /s/ NATHANIEL FELZER,  
Attorneys for Defendant.

[Endorsed]: Filed December 14, 1956.

District Court of the United States  
for the District of Hawaii

No. 11,072

UNITED STATES OF AMERICA,

vs.

DANIEL L. ABDUL.

**JUDGMENT AND COMMITMENT**

On this 11th day of January, 1957, came the attorney for the government and the defendant appeared in person and by counsel, Nathaniel Felzer, Esq.; Howard K. Hoddick, Esq.; and Allen R. Hawkins, Esq.

It Is Adjudged that the defendant has been convicted upon his plea of not guilty and a verdict of guilty as to Counts I, III, V, VII, IX and XI of the offense of wilfully and knowingly failing to file Employers' Quarterly Federal Tax Returns for taxes withheld from wages of employees, well knowing his duty and obligation to make such returns, in violation of 2707(b), Internal Revenue Code of 1939, 26 USC, § 2707(b); and 7203, Internal Revenue Code of 1954, 26 USC, § 7203, as charged and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of One (1) Year as to Count I; One (1) Year as to Count V; One (1) Year as to Count IX. Sentence as to Counts I, V and IX is to run concurrently.

Six (6) Months as to Count III; Six (6) Months as to Count VII; Six (6) Months as to Count XI. Sentence as to Counts III, VII and XI is to run concurrently with each other and consecutively with the sentence imposed as to Counts I, V and IX.

Further, It Is Adjudged the payment of costs on any one Count will satisfy the assessment of costs on the other Counts.

Mittimus is stayed until 12:00 o'clock noon, Monday, January 14, 1957.

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ JON WIIG,  
United States District Judge.

[Endorsed]: Entered January 14, 1957.

[Title of District Court and Cause.]

### NOTICE OF APPEAL

Name and Address of Appellant: Daniel L. Abdul,  
140 Niuiki Circle, Honolulu, T. H.

Names and Addresses of Appellant's Attorneys:  
Nathaniel Felzer, 268 Alexander Young Building, Honolulu, T. H.; Howard K. Hoddick and Allen R. Hawkins, 320 Damon Building, Honolulu, T. H.

#### Offenses:

The Appellant was charged in Counts I, III and V of the Indictment filed August 16, 1956, with violating Section 2707(b) of the Internal Revenue Code of 1939 in that he wilfully and knowingly failed to make to the District Director of Internal Revenue for the District of Hawaii the required Employers' Quarterly Federal Tax Returns for the last quarter of 1953, the second quarter of 1954 and the second quarter of 1955, respectively.

The Appellant was also charged in Counts VII, IX and XI in violation of Section 7203, Internal Revenue Code of 1954 of the same indictment with having wilfully and knowingly failed to make to the District Director of Internal Revenue for the District of Hawaii the required Employers' Quarterly Federal Tax Returns for the third quarter of 1954, the first quarter of 1955 and the second quarter of 1955, respectively.

On December 5, 1956, the jury returned a verdict of guilty against the defendant as to each of the aforesaid offenses.

Statement of Judgment or Order, Giving Date, and Any Sentence:

On January 11, 1957, a final judgment of conviction of the aforesaid offenses was entered by which the defendant was sentenced to confinement for a period of one year each as to Counts I, V and IX and for a period of six months each as to Counts III, VII and XI, the sentences of one year to be served concurrently and the sentence of six months to be served concurrently with each other but consecutively to said sentences of one year and the defendant was further ordered to pay the cost of prosecution.

The above-named appellant hereby appeals to the United States Court of Appeals for the Ninth Circuit from the above-stated judgment.

Dated at Honolulu, T. H., this 14th day of January, 1957.

NATHANIEL FELZER,  
HOWARD K. HODDICK and  
ALLEN R. HAWKINS,

By /s/ HOWARD K. HODDICK,  
Attorneys for Appellant.

[Endorsed]: Filed January 14, 1957.

[Title of District Court and Cause.]

## SUPERSEDEAS BOND ON APPEAL

Know All Men by These Presents:

That We, Daniel L. Abdul, as Principal, and Daniel L. Abdul and Katherine Y. Abdul, as Sureties, are held and firmly bound unto the United States of America in the full sum of \$5,000.00 for the payment of which well and truly to be made, we do bind ourselves, our executors and administrators, jointly and severally by these presents,

Whereas, lately, in the District Court for the United States in and for the District and Territory of Hawaii, judgment, sentence and fine were made and entered against Daniel L. Abdul, defendant above named, and

Whereas, notice has been given of appeal to the United States Court of Appeals for the Ninth Judicial Circuit, to secure a reversal of said judgment, sentence and fine, and

Whereas, the Honorable Jon Wiig, Judge of said District Court, did regularly order that a supersedeas and bail bond be given in the sum of \$5,000.00 pending said appeal.

Now, Therefore, the condition of the above obligation is such that if the said Daniel L. Abdul shall appear here in person or by attorney in the United States Court of Appeals for the Ninth Judicial Circuit on such day or days as may be appointed for the hearing of said cause in said Circuit Court and

prosecute his appeal and shall abide by and obey all orders made by said Circuit Court in said cause, and shall pay any fine, damages and all costs imposed by the Judgment of said District Court against him, and shall surrender himself in execution of the Judgment, Sentence and Fine appealed from as said Circuit Court may direct, if the Judgment, Sentence and Fine against him shall be affirmed or the appeal dismissed; and if he shall appear for trial in said District Court on such day or days as may be appointed for a retrial of said cause and abide by and obey all the orders made by said District Court, provided the Judgment, Sentence and Fine made against him shall be reversed by said Circuit Court, then the above obligation shall be void, otherwise to remain in full force, effect and virtue.

In Witness Whereof, the above-bounded Principal and Sureties have hereunto affixed their hands this 14th day of January, 1957.

/s/ DANIEL L. ABDUL,  
Principal;

/s/ DANIEL L. ABDUL,

/s/ KATHERINE Y. ABDUL,  
Sureties.

Taken and acknowledged before me this 14th day of January, 1957.

[Seal] /s/ KURT F. THOMPSON, JR.,  
Clerk, U. S. District Court.

## NOTICE OF LIEN

Notice Is Hereby Given that Daniel L. Abdul and Katherine Y. Abdul, husband and wife, whose residence and post office address is 140 Niuiki Circle, Honolulu, City and County of Honolulu, Territory of Hawaii, owners of the following lease, to wit:

That certain Lease dated November 17, 1953, made by and between Cooke Trust Company, Limited, Trustee under Indenture of Trust executed by Mary Lucas Pflueger and Harriet Lucas Cassiday under date of June 16, 1952, and Cooke Trust Company, Limited, Attorney-in-Fact for Niu Development Corporation, Limited, as Lessor and Daniel L. Abdul and Katherine Y. Abdul, as Lessees, and recorded in the Bureau of Conveyances of the Territory of Hawaii in Liber 2761 on Pages 146-153, said lease dismissing all those certain premises situated in Niu, Honolulu, City and County of Honolulu, Territory of Hawaii, being a portion of R. P. 52, L.C. Aw. 802 to Alexander Adams and being also a portion of the Old Niu Fish Pond, more particularly described in Exhibit B, attached to said Lease and by reference made a part thereof.

Subject, However, to that certain mortgage made by said Katherine Y. Abdul and Daniel L. Abdul to the American Security Bank, do hereby state that they are the sureties on a supersedeas bond pending appeal in the amount of \$5,000.00 posted in the United States District Court for the District of Hawaii, in United States of America v. Daniel L.

Abdul, Criminal No. 11,037, and that there is a lien upon the aforesaid property in favor of the United States of America until said supersedeas bond pending appeal is discharged by order of Court.

Dated at Honolulu, T. H., this 14th day of January, 1957.

/s/ DANIEL L. ABDUL,

/s/ KATHERINE Y. ABDUL.

Duly verified.

[Endorsed]: Filed January 14, 1957.

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[Title of District Court and Cause.]

ORDER EXTENDING TIME FOR FILING  
RECORD ON APPEAL AND DESIGNAT-  
ING APPEAL

On application of the Defendant, above named, made pursuant to the provisions of Rule 39c of the Federal Rules of Criminal Procedure,

It Is Hereby Ordered that the Defendant may have up to and including the 15th day of April, 1957, within which to file the record on appeal and to docket the appeal.

Dated at Honolulu, T. H., this 21st day of February, 1957.

/s/ J. FRANK McLAUGHLIN,

Judge of the Above-Entitled  
Court.

[Endorsed]: Filed February 21, 1957.

In the United States District Court  
for the District of Hawaii

Criminal No. 11,072

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DANIEL L. ABDUL,

Defendant.

TRANSCRIPT OF PROCEEDINGS

Held in the U. S. District Court, Honolulu, T. H.,  
commencing on November 26, 1956, at 10:00 a.m.

Before Hon. Jon Wiig, Judge, and a Jury.

Appearances:

E. D. CRUMPACKER, ESQ.,  
Assistant U. S. Attorney,  
Appearing for the Plaintiff.

HON. ALLEN R. HAWKINS,  
HOWARD K. HODDICK, ESQ., and  
NATHANIEL FELZER, ESQ.,  
Appearing for the Defendant.

\* \* \*

## HOWARD H. K. MEW

a witness on behalf of the Plaintiff being duly sworn, testified as follows: [22\*]

\* \* \*

Q. Let me ask you this: Could it have come from any other file? A. No, sir.

Q. Is that same true with any other exhibit?

The Court: Let's not go afield, now, Mr. Crumpacker. It makes it exceedingly difficult. If you want to lay your foundation for No. 1 and then offer it, then the Court will hear the objections and rule on them. Because there is some difference in each of these exhibits. And offering them en masse can cause difficulty.

Mr. Crumpacker: Yes, sir. I will reoffer No. 1.

Mr. Hoddick: May I ask some questions of the witness, your Honor?

The Court: Yes. [108]

## Voir Dire Examination

By Mr. Hoddick:

\* \* \*

Q. (By Mr. Hoddick): I call your attention to the pencil notation across No. 1 for identification and ask you if you made it?

A. I did not make it. I know the person who made it.

Q. How do you know? A. By the writing.

The Court: By what? [111]

The Witness: By her writing.

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\*Page numbering appearing at top of page of original Reporter's Transcript of Record.

(Testimony of Howard H. K. Mew.)

Q. (By Mr. Hoddick): And who do you believe that person to be? A. Mrs. Dolly Jordan.

Q. Dolly Jordan? A. That's correct.

Q. Do her initials appear anywhere on this return?

A. Her initials do not appear on this return.

Q. And does she work in your section?

A. She is the chief of the file section.

Q. You would not know when she put this on, if she did it? A. No.

Q. I also notice that there is a pencil circle around the one and a half per cent in line 6. Do you know when, where or how that got on there?

A. I have no idea.

Q. Mr. Mew, are you familiar with Mr. Abdul's signature, the defendant in this case?

A. I have never seen it before.

Q. Do you know whether that in fact is his signature on that return?

A. No; I know that is his name.

Q. It is signed Daniel Abdul?

A. That is correct.

Mr. Hoddick: We renew our objection as to the foundation. [112] Also Plaintiff's Exhibit No. 1 is outside of the period of the indictment and we object on the ground that it is immaterial and irrelevant.

The Court: Mr. Crumpacker, isn't the official custodian of these records available?

Mr. Crumpacker: I understood the witness to testify that they were from his files.

(Testimony of Howard H. K. Mew.)

The Court: Well, that was his first testimony. Then later on he testified that they were in the custody of someone else. He did not bring them to court from his files. My question is, do you know whether the official custodian of the records is available?

Mr. Crumpacker: May I ask the witness a question in that regard?

The Court: I will ask him. Who had official custody of these records after they left your office, so far as you know?

The Witness: After they left my office?

The Court: Yes. Of that record there.

The Witness: You mean after it was withdrawn from the file?

The Court: That's right.

The Witness: I have no idea after it had been withdrawn from the file, I have no idea.

The Court: After it left your division, where did it [113] go?

The Witness: To the file section.

The Court: To the file section?

The Witness: That's right.

The Court: And where is the file section located?

The Witness: In room 201, second floor of this building.

The Court: And who is in charge of that?

The Witness: Mrs. Dolly Jordan.

The Court: And under your normal operating procedure, would she be the custodian of that record?

(Testimony of Howard H. K. Mew.)

The Witness: Yes. Of course, she is under the chief of the returns processing branch.

The Court: She is under your direction?

The Witness: That is correct, sir.

The Court: So that you are directly responsible for the custody of that record, is that correct?

The Witness: Yes, sir.

The Court: The objection is overruled. It will be received as Exhibit 1.

(The document referred to was received in evidence as Plaintiff's Exhibit No. 1.)

The Court: Ladies and gentlemen of the jury, you will be excused for a ten-minute recess.

(A recess was taken at 11:03 a.m.) [114]

#### After Recess

The Court: The record will show that the jury is present, the defendant and his counsel.

Mr. Crumpacker: On the basis of the witness' testimony just before recess, your Honor, I would like to reoffer Exhibit No. 2 and the others.

The Court: If it only takes a minute to go down the line, Mr. Crumpacker, on the individual objections from Mr. Hoddick, let us proceed that way because I cannot rule properly until I know what the specific objections are. You are offering No. 2 now?

Mr. Crumpacker: Yes, your Honor.

The Court: Mr. Hoddick?

(Testimony of Howard H. K. Mew.)

Mr. Hoddick: And I once again ask that I be permitted to ask a few questions on voir dire.

The Court: Yes. But I want to ask one question first. As to Exhibit No. 2 for identification, Mr. Mew, are you the official custodian of that record?

The Witness: As acting chief of the returns processing branch, yes.

### Voir Dire Examination

By Mr. Hoddick:

Q. Mr. Mew, on Exhibit 2 for identification there appears in ink at the top of the return the words, "Dup Report." Do you see those? (Showing document to the witness.) [115] A. Yes.

Q. Do you know who put them on there?

A. No, sir.

Q. There also appears in red pencil under the column headed, "Return for Calendar Quarter," the letters 1984. Do you know when they were put on there, the numbers 1984?

A. That was put on there when the return was filed. Put on there by Mrs. Fujii. She checked the return off our master list.

Q. You assume that it was put on there by Mrs. Fujii? You did not see her do it?

A. I did not see her do it.

Q. That is the office?

A. That is the office procedure. When the return comes in, why, the master list number—she would put it on—

(Testimony of Howard H. K. Mew.)

The Court: Just a moment. Mrs. Courtney cannot hear you. And, Mr. Hoddick, I notice when you approach the witness closely sometimes your voice drops.

Mr. Hoddick: I will try to keep it up, your Honor.

The Court: Very well.

Q. (By Mr. Hoddick): Mr. Mew, in line 6 there have been changes made in ink in the printed percentage numbers that appear on that line. Do you know who or when they were made and by whom they were made or when?

A. I have no idea who made it and when it was made. [116]

Q. There also appears in ink in item 10 the numbers 9-6043. Do you know who put those there or when they were put there?

A. That was put there by one of the clerks in the computation, verification and matching section. This represents the account number assigned the tax return.

Q. Again, you did not do that yourself?

A. No, sir.

Q. Nor did you see it done? A. No, sir.

Q. You assume that it was done by a clerk in that section?

A. That is the office procedure in assigning numbers to returns received in the office.

Q. It is not your office procedure? It is the procedure of the cashier's office, isn't it?

A. It is the function of the computation, veri-

(Testimony of Howard H. K. Mew.)  
fication and matching section to assign tax returns received without remittance.

Q. A tax return which is received without remittance is not sent through the cashier's office?

A. It is received in the cashier's office. From there it comes to the returns processing branch.

Q. Well, isn't it the cashier's office that stamps this serial number on each return as it comes in?

A. The cashier's branch assigns a number on the tax return if the remittance accompanies the return. If no remittance accompanies the return, then the returns processing branch assigns an account number on the tax return.

Q. And that is what you assume happened in this case? A. That's correct, sir.

Q. And again I ask you, are you familiar with the signature of the defendant, Daniel Abdul?

The Court: He has already testified that he doesn't know.

Q. You do not know whether the signature which appears on this return is that of the defendant or not, do you?

A. I do not know whether he signed it but I am able to read this name, Daniel Abdul.

Q. It says Daniel Abdul—

Mr. Hoddick: Your Honor, we renew our objection that the receipt of this exhibit—

The Court: Well, instead of renewing it, will you state the grounds of your objection?

Mr. Hoddick: No adequate foundation has been laid for its admission in evidence, based both on

(Testimony of Howard H. K. Mew.)

the fact that he did not have direct custody of it, though he has the final responsibility, and we don't know where it has been since it left his office. And if it is going to be received, there is material on here on which there has been no proper foundation laid. This [118] "Dup Report" which appears on the top of it, we don't know how it got there. And we don't know where the original is. That indicates it is a copy.

The Court: The objection is overruled. The document will be received as Exhibit 2.

(The document referred to was received in evidence as Plaintiff's Exhibit No. 2.)

Mr. Crumpacker: May I reoffer Exhibit No. 3 for identification?

The Court: What is No. 3?

Mr. Crumpacker: That is the W-3 form for 1953.

The Court: Mr. Mew, are you the official custodian of that record?

The Witness: I am, sir.

The Court: Will you state your objection?

Mr. Hoddick: Your Honor, we object on the grounds of lack of proper foundation, and specifically call your Honor's attention to one thing, to the tape which is attached to this exhibit. The witness had no knowledge of where it came from and who made it. And we further object on the ground that this exhibit is immaterial and irrelevant to the charges contained in this indictment.

(Testimony of Howard H. K. Mew.)

The Court: The objections are overruled. The exhibit will be received as No. 3. [119]

(The document referred to was received in evidence as Plaintiff's Exhibit No. 3.)

Mr. Crumpacker: We reoffer Exhibit No. 4 for identification, being the returns for the first quarter of 1954.

The Court: Are you the official custodian of that record, Mr. Mew?

The Witness: As chief of the processing branch, I am, sir.

#### Voir Dire Examination

By Mr. Hoddick:

Q. Mr. Mew, there are some penciled notations that appear across the top of this return, Plaintiff's No. 4 for identification. Do you know when they were put there or by whom?

A. I do not know for certain but I have an idea who put it there. But I do not know when it was put on there.

Q. I also call your attention to item 10, one stamp number that has been crossed out with a red pencil and another stamp number placed therein. Do you know when that was done or by whom?

A. That deletion was made by the members in the cashier's branch. That was made when the return was filed.

Q. You assume it was done at that time and by members in the cashier's branch?

A. According to the office procedure.

(Testimony of Howard H. K. Mew.)

Q. Are you familiar with the procedures in the cashier's [120] branch?

A. Just this portion of it.

Q. Do you know why such a change would be made? A. No, sir.

Q. Also you do not know whether the signature on here is the signature of the defendant?

A. I know that the name Daniel Abdul appeared there.

Q. And you don't know where this document has been since it left the files of which you have the final responsibility?

A. I know that Mr. Crumpacker requested for it.

Q. I say, do you know where it has been since it left your office?

A. Not offhand. I would know it if I would look at the charge sheet to whom it is charged.

Q. Well, that would simply show where the person intended to take it when they took it out, wouldn't it?

A. That person is responsible for the safekeeping of the document.

Q. It would not show where it was in fact, would it? A. No, sir.

Q. And you are unable to state as a fact that you know of your own knowledge as to whether these particular items I call your attention to were added or changed before or after this was removed from your office? A. Which item? [121]

Mr. Crumpacker: I object to that. That is an improper—

(Testimony of Howard H. K. Mew.)

The Court: The objection is overruled.

The Witness: What items, sir?

Q. (By Mr. Hoddick): I refer to the penciled item at the top and the change in the number in item 10.

A. The change in the item 10 was made before the return left the files.

Q. How do you know? Did you look at it before it left your files?

A. Because the returns when they arrived from the cashier's branch must have a number.

Q. Isn't it possible that this return had the number 2160651 when it arrived from the cashier's branch?

A. A number once cannot be changed after we receive it from the cashier's branch.

Q. That is the procedure?

A. That is correct.

Q. Now, as to the pencil notation, you do not know for a fact whether these were added before or after it was withdrawn from your office?

A. Not for certainty, sir.

Mr. Hoddick: Your Honor, we will renew our objection on the ground of lack of proper foundation and would like to urge upon the Court that when the exhibit comes in the entire matter comes in, and if there isn't a foundation for the [122] entire exhibit, we submit it should not be received.

The Court: Is there anything impertinent or damaging in connection with the penciled notations at the top that you have asked the witness about?

(Testimony of Howard H. K. Mew.)

Mr. Hoddick: I have no idea what it relates to.

The Court: What does it say? Read it.

Mr. Hoddick: "2/28 Post Met." It looks like an "EW ATT to form 941 M/L No. 2066."

The Witness: I can explain that, sir.

The Court: Will you explain?

The Witness: It means that the envelope in which the return was mailed in was attached to another return and 2/28 stands for the date in which the notation was made. ATT stands for attached. It means the envelope shows the postmark, envelope bearing the return attached to another return.

Q. (By Mr. Hoddick): If that is the case, Mr. Mew, that notation indicates that the envelope was attached to form 941, doesn't it?

A. 941 bearing the master list number 2066.

Q. That is the form 941 you have in your hand, isn't it?

A. No. This return bearing the number 1997, master list. The envelope is attached to the return bearing the master list number 2066.

Q. But you don't know when that notation was put on? A. Not definitely. [123]

Q. Nor do you have the envelope?

A. No, sir; it is not attached.

Mr. Hoddick: We will renew the objection.

The Court: The objection is overruled. The document will be received as Exhibit 4.

(The document referred to was received in evidence as Plaintiff's Exhibit No. 4.)

(Testimony of Howard H. K. Mew.)

Mr. Crumpacker: We reoffer Exhibit 5 for identification.

The Court: Are you the official custodian of Exhibit No. 5 for identification?

The Witness: As acting chief of the processing branch, I am, sir.

Mr. Hoddick: Mr. Mew, your testimony with reference to Exhibit No. 5 for identification will be the same as it was with reference to Exhibit No. 4, would it not, both with reference to the notation crossed out and the pencil notation at the top and the signature that appears thereon?

The Witness: That is correct, sir.

Mr. Hoddick: We object on the same grounds of lack of proper foundation as to those particular items.

The Court: Same ruling. The document will be received as Exhibit No. 5.

(The document referred to was received in evidence as Plaintiff's Exhibit No. 5.) [124]

Mr. Crumpacker: We reoffer Exhibit No. 7 for identification, it being the third quarter of '54, your Honor.

Mr. Hoddick: Mr. Mew, I notice quite a number of these exhibits have that one number crossed out in item 10 and a new number inserted. Do you have any explanation for that?

The Witness: No, sir.

Mr. Hoddick: And again you do not know if that is the defendant's signature?

(Testimony of Howard H. K. Mew.)

The Witness: I know the name Daniel Abdul appears there.

Mr. Hoddick: And you do not know where this has been since it was removed from the files of your office?

The Witness: No, sir.

Mr. Hoddick: Lack of proper foundation and we object.

The Court: Objection is overruled. The document will be received as Exhibit No. 7.

(The document referred to was received in evidence as Plaintiff's Exhibit No. 7.)

Mr. Crumpacker: I would like to reoffer Exhibit No. 8 for the fourth quarter of '54 return.

Mr. Hoddick: We object to that exhibit, your Honor, preliminarily on the grounds that it is immaterial and irrelevant, being for a period not covered by the indictment.

The Court: The objection is overruled.

Mr. Hoddick: May I also examine the witness with [125] reference to the foundation?

The Court: Yes.

#### Voir Dire Examination

By Mr. Hoddick:

Q. Mr. Mew, do you know the origin of this tape that is attached to the Exhibit No. 8 for identification? A. I can only assume.

Q. You do not know? A. No, sir.

(Testimony of Howard H. K. Mew.)

Q. And do you know who or when, do you know who crossed out, and do you know when this number 26372 appearing in item 10 was crossed out?

A. I do not.

Q. Do you know what that notation, do you know what that number signifies or how it got there?

A. May I see it? I can only assume.

The Court: You can what?

The Witness: I can only assume.

The Court: The answer is "no," then, is that correct?

The Witness: No, sir; not for a certainty.

Q. (By Mr. Hoddick): You do not know whether this is the signature of the defendant?

A. I know the name to be Daniel Abdul.

Q. And this envelope which is attached to it is postmarked February 1st, is it not? [126]

A. I believe it is.

Q. How is it that no penalty was assessed in this case?

A. May I see that, sir? May I see the calendar for January, 1956, please?

Q. What do you want to see?

A. I would like to see the calendar for 1956, January. (The Court hands a calendar to the witness.) Thank you. Penalty on this return had been imposed for late filing.

Q. (By Mr. Hoddick): It has been imposed?

A. That's correct, sir.

Q. That is by way of an assessment on the back?

A. That's correct.

(Testimony of Howard H. K. Mew.)

Mr. Hoddick: Objection, your Honor, as to lack of proper foundation; and we have already objected to it as immaterial and irrelevant, I believe, and your Honor ruled.

The Court: Here, again, Mr. Mew, you are the official custodian of that form 941 and the attachment thereto, is that correct?

The Witness: As acting chief of the processing branch, I am.

The Court: The objection is overruled. The document will be received as Exhibit 8.

(The document referred to was received in evidence as Plaintiff's Exhibit No. 8.) [127]

\* \* \*

### KATSUYOSHI WATANABE

a witness on behalf of the Plaintiff, having been duly sworn, testified as follows:

#### Direct Examination

By Mr. Crumpacker:

Q. Will you state your full name, please?

A. My name is Katsuyoshi Watanabe.

Q. Let me remind you that the acoustics are not too good in the courtroom and everybody has to hear you. So will you speak up as best you can?

A. Yes.

Q. What is your occupation?

A. I am self-employed at the present time. I am in the collection business.

(Testimony of Katsuyoshi Watanabe.)

Q. What was your occupation in 1952 through 1955?

A. I was hired as a bookkeeper by the Home Furniture Company, Limited.

The Court: Now, just a moment. See that lady in [142] the back row of the jury box there?

The Witness: Yes.

The Court: And you see these gentlemen at the end of the table here. They want to hear every word you say. Will you speak louder, please?

The Witness: Yes, sir.

The Court: Will you repeat the last answer?

The Witness: I was hired by the Home Furniture Company, Limited, as a bookkeeper.

Q. (By Mr. Crumpacker): When did you first go to work for Home Furniture?

A. I believe it was in December, 1952; December the 14th, I believe.

Q. And how long did you work there?

A. Through February, 1955; approximately about the 14th of February.

Q. That was full time? A. Yes, sir.

Q. Did you work any more after that?

A. Well, Mr. Abdul asked me if I would do him a favor of working part time, on a part-time basis, and I agreed to it, that I would.

Q. And how long was it that you worked part time?

A. Well, I worked on a part-time basis until I had a case which was brought by the Wage and Hour— [143]

(Testimony of Katsuyoshi Watanabe.)

Mr. Hoddick: May I interrupt the answer? It is irrelevant and immaterial and I ask it be stricken.

The Court: Well, I will strike from the record the fact of a case being involved. Give us the time. Approximately what time did you stop working part time?

The Witness: That was in approximately '55, probably about August or September.

Q. (By Mr. Crumpacker): And where was it that you worked for Home furniture?

A. 1255 South Beretania Street.

Q. What was the type of business?

A. It was a retail household goods—furniture and household goods.

Q. How many employees worked there at the time you were there?

A. Well, it varied. When I first started, I believe it was about 14, on an average. Then there was about—'53, up to '53 and '54, I will say about 10, and in '55, I think it was about six or seven of us there.

Q. And what, briefly, were the functions of the various employees?

A. Well, we had the office. It consisted of Mr. Abdul, secretary, credit manager, and myself.

Q. Is Mr. Abdul in this courtroom?

A. Yes, sir. [144]

Q. Can you identify him?

A. He is next to Mr. Hoddick, on my left.

Q. The second gentleman sitting at the counsel table to my right?

(Testimony of Katsuyoshi Watanabe.)

A. With the dark suit, in the middle of Mr. Hoddick and the gentleman on his right.

Mr. Crumpacker: May the record reflect the witness has identified the defendant?

Mr. Hoddick: We will so stipulate.

The Court: Yes. The stipulation is approved.

The Witness: Then we had the warehouse, which was located on Kaauwai Street at one time and then was transferred to the airport housing. We had approximately, at the very beginning, I would say we had about five employees. Then it varied down to about—in '54 it was about three and '55 there was one of them. Then we had a janitor, just one janitor. Then at the very beginning we had about six to eight salesmen, '52, '53, about '54 down to approximately two salesmen. In '55, one of the salesmen was transferred to the collection department.

The Court: Will you repeat that last answer? Mrs. Courtney couldn't hear you—the last part of your answer.

The Witness: In 1955 one of the salesmen was transferred to the collection department, so actually we had just one salesman. [145]

Q. (By Mr. Crumpacker): Now, within the office itself how were the duties divided?

A. Well, I took care of the bookkeeping, all of the bookkeeping transactions, also collected receipts from the customers, and also I answered the PBX that he had, and took collection payments, also.

Q. And during this period that you were there, who ran the business, who was the boss?

(Testimony of Katsuyoshi Watanabe.)

A. Well, Mr. Abdul was the boss, sir.

Q. Aside from his being the boss, do you know what his title was?

A. Well, he was the president and the general manager of Home Furniture Company, Limited.

Q. Who else, if you know, had anything to do with the direction of the business?

A. No one except I understood that Mrs. Abdul was the secretary-treasurer.

Q. Did she have anything to do with the direction—

The Court: Can you hear? Will you read the last question and answer. And, Mr. Watanabe, we will get along a lot better if you will try to speak louder, please.

(The record was read by the reporter.)

Q. (By Mr. Crumpacker): From your own observation what did Mrs. Abdul have to do with the operation of the business? A. Mr.— [146]

Q. Mrs. Abdul?

A. Well, I haven't actually seen her work in the office. Only at times I have seen her, I guess you would call it the display work, the sales department.

Q. What specific duties did she have, if any, that you know? A. None, sir.

Q. What was the gross business, if you know, of the company during the years 1953 to 1954 and 1955?

Mr. Hoddick: Object to the question, your Honor, immaterial and irrelevant.

(Testimony of Katsuyoshi Watanabe.)

The Court: Mr. Crumpacker, what do you have to say to that?

Mr. Crumpacker: Well, I will withdraw the question.

The Court: Very well.

Q. (By Mr. Crumpacker): What were your duties?

A. I, as I said, I took care of all the bookkeeping transactions and also computed the tax, monthly and quarterly tax reports.

Q. And from what did you compute the tax?

A. From the payroll records, sir.

Q. And who prepared the payroll records?

A. I did, sir.

Q. Would you state how you prepared the payroll records?

A. Well, we had a mimeograph, typed form for all payrolls, [147] and semiannually I would compute the wages on this form. It had—on this form it had the names, the withholding tax, the Territorial 2 per cent, the Social Security and Federal withholding, we had insurance and also advances and also had the list of net balance and the check-number columns.

Q. Net balance and check number?

A. Check-number columns.

Q. The net balance being what?

A. I beg your pardon, sir?

Q. What is the net balance?

(Testimony of Katsuyoshi Watanabe.)

A. After the taxes are deducted and whatever the other deductions are computed.

Q. Is that the amount paid to the employee?

A. Net amount paid to the employees.

Q. And the check number; what was that?

A. That is the check issued against the amount due to the employees.

Q. And what was done with those payrolls after they were completed?

A. Well, the taxes—after it was withheld, I prepared—in fact, the government sent me—the Reserve Bank sent me a blank and the number of the form was 450, sent me a blank to have them prepared and to be deposited the following month on or before—it was either the 10th or the 15th day of the following month—to be deposited to any of the Reserve Banks. And [148] it so happened the closest bank we had dealt with at the time was the American Security Bank on the Makiki Branch.

Q. And what was the procedure that you used with that form?

A. Well, after I had prepared the form, the check was drawn against the amount which was withheld and that was taken to the bank, to the cashier. And after she had accepted the check, she would give me a receipt saying that it was for the federal withholding taxes. Then before the following month's taxes, withholding taxes was due, then they would send me a blank with this first depository receipt. Then after this was—the second month was prepared, I followed the same routine, went to the

(Testimony of Katsuyoshi Watanabe.)

bank, deposited, got the receipt. Then the Reserve Bank would send me the form, back to me at the end of the third month or before the following month I would prepare the quarterly return and this would be computed from the payroll records. And on the back of the quarterly return I would list down the serial numbers of the depository receipts, the amount and the date it was accepted. Then for the third month I would make the check for the differential of the total taxes due for the quarter, and there would be two depository receipts plus a check. The check is for the last month.

Q. In making these payments to the bank, you say you drew a check? A. Yes.

Q. You had a depository receipt? [149]

A. Yes.

Q. Who was it that signed the check?

A. Mr. Abdul did, sir.

Q. Did anyone else sign any checks for the company?

A. Not on the Makiki Branch checks.

Q. What is that?

A. Not on the Makiki Branch. There was other checks that needed two signatures, but not the Makiki Branch papers, sir.

Q. How long did you follow this procedure?

A. Well, I followed this since I was employed, December, I followed this through, the third quarter of 1953. Then on the—November I prepared a depository receipt, I typed out the blanks and I

(Testimony of Katsuyoshi Watanabe.)

drew a check, and spoke to Mr. Abdul that this was due on the 10th or the 15th. The check wasn't signed and all I knew, it was past due, so I couldn't deposit that receipt. Well, the Reserve Bank, because of not receiving our forms, did not send any more blanks to us. So what happened is that when the taxes was due at the end of the quarter, we had to draw up the whole quarter check taxes due instead of—there was no depository receipt because no funds were deposited then.

Q. Before you go on, may I ask you if you can identify Plaintiff's Exhibit No. 1?

A. Yes. This is the quarterly federal tax return 941, [150] sir. And this on the back shows the depository receipt 450 and the serial numbers of the receipts, and also the validation date and the amount, sir. Then way down below here the figure shows the check which should accompany this form, with the depository receipt and the check. And the form should be sent into the District Director of Internal Revenue.

Q. Did you prepare that form?

A. Yes, sir, I did.

Q. When was that prepared?

A. I normally prepared these forms about the—see, it is due on or before the 31st day of the following month after the quarter is ended, and I would prepare, normally, about the 23rd, approximately about the 23rd.

Q. Do you know when you prepared that particular form?

(Testimony of Katsuyoshi Watanabe.)

A. Well, I sent this to—I must have prepared this before the due date. It shows that was received on the 22nd.

Q. What did you do with it after you prepared it?

A. Well, after the forms were prepared the check was drawn—the earliest beginning, his secretary made out the checks and then that was drawn up and that was left on his desk for his signature on the checks, plus the forms.

Q. Do you know who drew the check up for that return?

A. This probably was drawn by Miss Yasuda, she is known as Mrs. Ishizaki now.

Q. And when you had prepared the form, how did you [151-152] process it, after preparing it?

A. Well, all of the entries are checked, checks—the check was recorded in the check record, and also the general journal. The normal transaction was transacted.

Q. What did you do with the form itself after you completed it?

A. Well, it was left on Mr. Abdul's desk and my retaining copy was filed automatically in the tax file, receipt file that we have—that we had.

Q. Where is that file now?

A. Well, the last I knew was when the—we had it in the store on the left-hand drawer in a manila folder that we have there.

Q. That is in the office, is that what you refer to?

A. Yes, sir, on Beretania Street, sir.

(Testimony of Katsuyoshi Watanabe.)

Q. Do you recognize the signature on that form?

A. Yes. This belongs to Mr. Abdul, sir.

Q. You can identify that as Mr. Abdul's signature? A. Yes, sir.

Q. Where did this form come from which you prepared, the return?

A. The District Director, sir.

Q. And can you briefly state what was on the form at the time you received it?

A. Well, it shows the total we had of withholding from [153] wages, total tax withheld from wages.

Q. My question is: In what form was it when it was received by you?

A. It was my payroll records, sir.

The Court: What did you say?

The Witness: Payroll record, sir.

Q. (By Mr. Crumpacker): No. You don't understand the question. The question is: How did the blank form come to you from the District Director's office, in what form? That is, what was on the form when you received it from the District Director's office?

A. Well, it has the company's name, also had the—I guess they call it the identification, the address, for the quarter taxes due and due on such-and-such a date.

Q. You are referring to the items appearing in section 10; is that right? A. That is right.

Q. Was this the size of the form or was the form larger than that originally?

A. Well, they had certain schedules attached to

(Testimony of Katsuyoshi Watanabe.)  
that with listing of names, the account number and  
the amount of the taxes.

Q. I show you Plaintiff's Exhibit 12 and ask  
you if you can identify that as being a blank form  
941? A. Yes, sir. [154]

Q. You referred to the schedules in connection  
with Exhibit 1? A. Yes, sir.

Q. As the same schedules as appear on this?

A. Yes, sir, exactly the same, sir.

Q. Now, continuing on from the time you stated  
in November, you were unable to make your deposi-  
tory receipts? A. Yes, sir.

Q. You say you prepared the quarterly return  
for the last quarter of 1953? A. Yes, sir.

Q. And do you recall when you did that?

A. That was prepared on or before the 31st day  
of January, 1954.

Q. And what did you do with it when you pre-  
pared it?

A. Well, the check was drawn and it was left on  
his desk.

The Court: We can't hear you.

The Witness: The check was drawn against the  
amount due to the District Director and was left  
on his desk for his signature.

Q. (By Mr. Crumpacker): Do you know what  
happened to it after that?

A. Well, I have seen the forms. In fact, I have  
seen several checks which I had made that was in—  
on his desk, or [155] it was on his tray which was

(Testimony of Katsuyoshi Watanabe.)  
laid—set on his desk, in a manila folder. Some was with signatures and some was without signatures.

Q. And during what period was that?

A. Well, this was the period '53 right on to '55, I think.

Q. Now, specifically do you know what happened to the form which you say you prepared for the last quarter of 1953 after you placed it on his desk?

A. He had placed it in his folder that he had on his desk, sir.

Q. Do you know where it went from there?

A. Well, he had it on his desk and sometimes it was in the safe. Most of the time it was on his desk.

Q. Do you know for how long?

A. Well, ever since I was there from '53 on, sir.

The Court: What was that last?

The Witness: Ever since I was there, since '53.

Q. (By Mr. Crumpacker): Well, when was that due? A. I beg your pardon, sir?

Q. When was the last quarter of the '53 return which you say you prepared, when was that due?

A. That was supposed to be due on or before the 31st day of January, 1954.

Q. When you say you noticed it on his desk after that [156] date— A. Yes, I did.

Q. —did you ever discuss it with him?

A. I discussed the matter with Mr. Abdul when I got calls and visits from the District Director, the agents that were up at his office, sir.

Q. When did you receive your first call, approximately? A. Approximately April.

(Testimony of Katsuyoshi Watanabe.)

Q. Of 1954? A. Right.

Q. I show you Plaintiff's Exhibit No. 2, which is a return for the fourth quarter of 1953, and ask you if you can identify that?

A. This was taken from the original form 941 which was prepared on the—January, 1954.

Q. Is that or is that not the original that you prepared?

A. I don't recall this one here.

The Court: We didn't hear your answer.

The Witness: I don't recall this one here, this particular one. I prepared the original, then Home Furniture had requested for duplicate forms, blank forms. I have prepared those, and that is all.

Q. (By Mr. Crumpacker): But you did prepare this particular one? Can you tell whether this is the one that you prepared? [157]

A. Not this one, not that I recall.

The Court: I can't hear, Mr. Watanabe. I told you these other people have to hear you, so keep your voice up. Do you want a glass of water?

The Witness: No, sir.

Mr. Hoddick: Can we have the reporter read that?

The Court: Yes.

(The record was read by the reporter.)

Q. (By Mr. Crumpacker): At any rate, it is your testimony this is not the original which you prepared?

A. Yes, sir, that is not the original.

(Testimony of Katsuyoshi Watanabe.)

Q. Can you identify the signature on that?

A. Yes, sir. This belongs to Mr. Abdul.

Q. Now, at the time you prepared the fourth quarter 1954 return—excuse me—1953 return, did you prepare any other tax form for the District Director's office?

A. Yes. I prepared the annual form. I can't recall what form number it is, though. The annual form was prepared. It looks similar to the quarterly form, 941.

Q. And what information was placed on that form?

A. The total amount of taxes withheld, also the number of W-2 forms attached, W-2a forms attached with this report, and also the total taxes withheld per quarter for the calendar year.

Q. And what happened to the employees' W-2 forms? [158]

A. Oh, I have sent that out at times, sir. That was sent out before the end of the 31st day of January.

Q. Did they go with the form you have already referred to? A. The 2a, sir.

Q. May I ask you if you can identify Plaintiff's Exhibit 3?

A. Yes, sir. This is the form that I have just mentioned.

Q. And that was prepared by you as you testified at the end of the year '53?

A. Yes, sir, that was prepared sometime in January.

(Testimony of Katsuyoshi Watanabe.)

Q. Do you know whether or not you prepared that at the same time that you prepared the fourth quarter, 1953?

A. Yes. In fact the fourth quarter return was prepared ahead of this particular form, sir.

Q. And the information from that placed on this form?

A. Yes, that was compiled, got together and all of the figures was obtained from the quarterly returns.

Q. And what happened to this form after you prepared it, Exhibit 3?

A. This form here does not require the officer of the company's signature, so that was sent in automatically. In fact, I had mentioned to Mr. Abdul what this was all about, and this does not require his signature, so this was sent in with the 2a forms. [159]

Q. You did discuss it with him before you sent it in?

A. Yes, I normally discussed the forms that I prepared, of the forms.

Q. Well, did he acknowledge in any way—you say you explained what the purpose of the form was to him? A. Right, sir.

Q. And where was the third quarter, fourth quarter 941 at that time?

A. It was on his desk, sir.

Q. Going back to your payroll, let me ask you, you say you prepared the payroll records and put

(Testimony of Katsuyoshi Watanabe.)

them in a Home Furniture Company file and the last you knew of that file it was in the office?

A. You mean the tax forms or payroll records?

Q. No, payroll.

A. The payroll records were on the desk, in the lefthand drawer. The tax receipts were in the safe, in the drawer.

Q. I see. After you prepared the payroll which you say contained the withholding schedules on it— A. Yes, sir.

Q. —what did you do with that? You say you used that to prepare the tax return. Did you use it for any other purpose? In other words, what other bookkeeping did you do with regard to the payroll?

A. We had—I had to prepare the individual payroll records. [160]

Q. Well, what bookkeeping entries did you make as a result of the payroll records?

A. Well, on the checking record, the net amount of the check was credited against the bank account and the net amount was credited to accrued wages, and a journal entry, the gross amount was debited to salaries or wages paid, the taxes were credited to—liable as credited to whatever taxes payable to whichever government was due. Then the net amount was credited to the accrued wages.

Q. And what did you call the account in your general ledger in relation to these tax withholdings?

A. It was called the taxes payable. At all columns, the particular sheets had several columns, and on the top of the heading we would put all the

(Testimony of Katsuyoshi Watanabe.)

withholding taxes, the government taxes was on one page—I mean the federal government, and the territorial taxes was on the other. It was all segregated.

Q. And when you issued a check to the federal depository what entry was made to reflect that?

A. Well, there was—a check was drawn, so that was credited to the bank, and the amount deposited was debited to the accrued taxes.

Q. To what? A. Accrued taxes.

Q. Accrued taxes? A. Right. [161]

Q. You previously have stated that the forms you prepared were similar to this Exhibit No. 12. Can you state what form was placed on the bottom half?

A. The employee's account number, the Social Security number, the name of the employee, then the wages paid to the employees for whichever quarter it was, and the territorial unemployment.

Q. And the total amounts at the bottom?

A. Yes, sir; the total amount. That equals the—that figure is added with all the rest of the column.

Q. What do you use the total figure for?

A. To compute the taxes that the employer pays.

Q. That is the employer's share of th—

A. Social Security.

Q. —Social Security? A. Right.

Q. Now, you referred to your tax account in your general ledger; how often were entries made in there against the federal tax account?

A. Well, the posting was done every day, the journal postings, then this at the end of the month

(Testimony of Katsuyoshi Watanabe.)

and the total was posted to the ledger once a month, at the end of the month.

Q. That information from the payroll record?

A. Yes, sir.

Q. Now, directing your attention to the first quarter [162] of 1954, did you prepare a return for your federal withholding?

A. Yes, sir. That was prepared some time in April, on or before the 31st day.

Q. And what did you do with that one when you prepared it?

A. After it was prepared, then a check was drawn against it and it was left on his desk for his signature.

Q. Do you know what happened to it after that?

A. Well, these forms were kept in his manila folder with the rest of the checks that he had on his desk.

Q. Do you know what happened to it from there?

A. No. It was in the folder for quite some time, in fact, I can remember ever since I was employed there.

Q. And the second quarter of 1954, did you prepare the return for that quarter?

A. Yes, sir; I did.

Q. And what happened to that one?

A. Well, it was prepared and check was drawn and it was left on his desk for his signature.

Q. What happened to it after that, if you know?

A. It was in his folder, left it in his folder.

(Testimony of Katsuyoshi Watanabe.)

Q. And the third quarter of 1954?

A. The same procedure.

Q. And what happened to the return for the third quarter of '54, if you know? [163]

A. It was prepared, sir. That was also left on his desk, check was drawn and it was left on his desk for his signature.

Q. Do you know what happened to it after that?

A. Left in his manila folder again, which was located on his desk.

Q. Do you know whether or not it was ever mailed or any one of the 19—the first three quarters of 1954, whether they were ever sent in?

A. Not that I know of. I have seen them in his manila folder. It was left in his manila folder.

Q. They weren't sent in to your knowledge?

A. No, sir.

Q. Now, you say that you brought the matter to Mr. Abdul's attention after you received a call from one of the revenue agents? A. Yes, sir.

Q. And when was that?

A. Some time in April.

Q. April of 1954? A. '54; right.

Q. And who was that agent?

A. Miss Burns.

Q. Miss Burns? A. Burns; right. [164]

Q. What did you do when she came into the office?

A. Well, I—she questioned me about the—

Mr. Hoddick: One second, Mr. Witness. I am advised that Miss Burns is presently in the court-

(Testimony of Katsuyoshi Watanabe.)

room, and at this time we would like to renew our motion to have other witnesses excluded, since they are obviously going to be testifying to the same things, so it might be prejudicial.

The Court: Sometimes it is a verification rather than prejudicial. In order that no question may be raised, I will ask Miss Burns to remain out of the courtroom for the time being.

Mr. Crumpacker: May the record reflect Miss Burns left the courtroom, your Honor?

The Court: Yes.

Q. (By Mr. Crumpacker): Will you explain what happened when Miss Burns contacted you?

A. Well, she came over to the office, she questioned me about the returns, so I told her that I had prepared it and also drew a check against it, but whether they were submitted to the District Director, I said I couldn't tell, I didn't know. In fact, I couldn't—I was reluctant to release any information because I was still employed at Home Furniture. So I got my—the retaining copy from the files and show it to Miss Burns, our retaining copy and also my check record.

Q. And you showed those to Miss Burns? [165]

A. Yes, sir.

Q. As a result of that you say you brought the matter to Mr. Abdul's attention?

A. Yes, sir. After she had left—I believe Mr. Abdul was out then—when he returned I told Mr. Abdul that Miss Burns from the Revenue was over and she had questioned me on those reports that he

(Testimony of Katsuyoshi Watanabe.)

had in the folder, and his answer was that he was going to take care of it. And, in fact, she left her number with me, telephone number, to have Mr. Abdul call her.

Q. And what did you do with that telephone number?

A. Well, I gave it to him on a scratch paper.

Q. Then you say following that date you prepared the returns for the first three quarters of 1954 on a timely basis. Directing your attention to November of 1954, did you have any occasion to talk to Miss Burns again with respect to these returns?

A. Yes, sir; I did.

Q. When and how many times?

A. I spoke to Miss Burns several times on the phone, and also she was in my—our office a couple of times.

Q. And what was the subject of the conversation?

A. It was pertaining to the forms, not receiving those quarterly returns.

Q. Which ones? A. '53. [166]

Q. You are referring to the one for 1953?

A. Yes, sir.

Q. The last quarter of 1953? A. Yes, sir.

Q. Was there ever any discussion about the 1954 returns?

A. Yes; she also mentioned that; she questioned that they also did not receive those returns, and I also told her that, again, I mentioned that I had prepared and I had the retaining copy of those

(Testimony of Katsuyoshi Watanabe.)

forms that I prepared. Again, whether it was submitted to the Internal Revenue, I didn't know about it.

Q. Approximately how many times did you talk to her in November?

A. I think about four times, I believe.

Q. What did you do as a result of your conversations with her?

A. Each time she would leave her number with me and I would speak to Mr. Abdul. Then I would tell him what it was all about again, it had to do with the tax forms that he had in his folder.

Q. How many times did you bring this matter to Mr. Abdul's attention?

A. Each time the agent—

Q. Each time she talked to you about it?

A. —questioned me about it. [167]

Q. What was his response?

A. He said that he would take care of it, sir.

Q. You say you had previously seen some of these delinquent forms in his desk or in a folder on his desk? A. Yes; I did, sir.

Q. Does that pertain to all four of them?

A. His quarterly taxes.

Q. Including the first three quarters of '54?

A. Yes, sir.

Q. When was the last time you saw those on his desk?

A. I believe I have seen one in '55, January, I believe, if I am not mistaken.

Q. Now, directing your attention to the month

(Testimony of Katsuyoshi Watanabe.)  
of December, 1954, did you have occasion to talk  
to Mr. Chock over the telephone?

A. Yes. He had called me. I believe I was out  
then. I returned his call, then he was out.

Q. Who is Mr. Chock?

A. He was one of the agents, federal agents.

Q. From the Internal Revenue Service?

A. From the Internal Revenue Service, sir. And  
then when I finally got hold of Mr. Chock, I told  
him exactly what I had told Miss Burns. In fact, I  
added a few more statements that if they could  
mail a duplicate blank that I would prepare the  
reports again. [168]

Q. What happened as a result of that conversa-  
tion?

A. Well, I did receive—later I received—in De-  
cember I received three copies, blank copies of  
those forms, and I prepared those and I drew a  
check against those forms, and that was also left on  
his desk.

Q. For each one of them? A. Yes, sir.

Q. And from what did you get the information  
to prepare those?

A. Well, from a retaining copy.

Q. I show you Plaintiff's Exhibits 4, 5 and 7  
and ask you if you can identify those—oh, and 6,  
also—4, 5, 6 and 7?

A. Yes. These are the checks. This is the check  
that I had prepared which was returned by the  
bank. These are the forms that I had prepared.

Q. Do you identify the signature on those

(Testimony of Katsuyoshi Watanabe.)

forms? A. This belongs to Mr. Abdul.

Q. On each one of them? A. Yes, sir.

Q. And when were those prepared?

A. Some time in December.

Q. Incidentally, Plaintiff's Exhibit No. 6, whose handwriting is that check in, that being a photostat of a check?

A. This was my writing and the signature is Mr. Abdul's. [169]

Q. Your writing?

A. In the payable column.

Q. And Mr. Abdul's signature? A. Right.

Q. Excuse me. When did you say those were prepared? A. Some time in December.

Q. Can you tell by reference to any of the Exhibits?

A. This check was drawn December the 27th, '54. So was the report.

Q. The returns, the three returns were prepared at the same time? A. Yes, sir.

Q. And three checks? A. Yes, sir.

Q. This being a photostat of one of the checks?

A. One of the checks, sir.

Q. You say you received only three forms?

A. Yes, sir.

Q. Although it had been brought to your attention that there were four that were delinquent?

A. There were four.

Q. So you prepared duplicates for the first three quarters of 1954. What did you do with them?

A. Well, it was prepared and it was left on his

(Testimony of Katsuyoshi Watanabe.)

desk with a check drawn against it. Each report had—each check was [170] accompanied with the report. And after that—the original check was drawn on the American Security Bank, Makiki Branch, and the new checks which was drawn December 27, '54, was drawn on the Central Pacific Bank, sir. I made a reverse entry on the first check which was drawn on the Makiki Branch, American Security Bank.

Q. What do you mean by a "reverse entry"?

A. Well, because the first check—we had voided the first three checks that the—that had not gone through the bank for processing. It was not cashed at all.

Q. So the reversing entry is to strike out the first ones and enter the next ones in their place; is that right? A. Yes, sir.

Q. And you placed these returns with the checks on Mr. Abdul's desk. Do you know what happened to them after that?

A. It was in his folder, sir.

Q. Do you know whether they were ever mailed?

A. Not while I was working there steadily.

Q. Did you ever prepare any other duplicates?

A. No; just once.

Q. Just that one time? A. One time.

Q. Now, you say these were in a folder on his desk. Was there anything else in that folder?

A. Well, all he had in the folder was checks that was [171] made which were—some of them was signed, some was not signed—which was payable to

(Testimony of Katsuyoshi Watanabe.)

some creditors, some individuals, and some to the tax people.

Q. It was a folder containing, then, you might say, disbursements of some kind? A. Right.

Q. Nothing but potential disbursements?

A. Right.

Q. With the prepared checks? A. Yes.

Q. Some signed and some unsigned?

A. Some signed, some unsigned.

Q. In each case for obligations that were due?

A. Yes, sir.

Q. Can you give any reason why they were retained in that file and not processed immediately?

A. Because of the insufficient funds that we had in the bank.

Q. And how was it decided which ones to pay and which ones not to pay?

A. That is handled by Mr. Abdul.

Q. And how did he get his information as to what funds were available?

A. Well, we had a mimeographed report that was prepared for the mornings, and this report would show his expenses for [172] the day, previous day, the income for the sales for the previous days, and also the outstanding contracts in transit with the finance company.

Q. In transit? A. Yes, sir.

Q. What do you mean by that?

A. Well, we would type some contracts up today for financing, and these people, at the very beginning, is located up in the mainland in California.

(Testimony of Katsuyoshi Watanabe.)

It was known as the State Investment. They are known as the Equitable Plan Company today. And because they were in the states, there would be contracts on the way for processing. In other words, they would buy these contracts, whether on a non—

Mr. Hoddick: Just one second. May I interrupt to object? It would appear to be irrelevant and immaterial.

The Court: I think you have answered the question. There were contracts that were coming from California to Honolulu; is that correct?

The Witness: No; it wasn't contracts that were coming to Honolulu; it was contracts that were going to California.

The Court: Well, that is what you speak of as being in transit?

The Witness: In transit, sir.

The Court: Well, I think that covers it.

Q. (By Mr. Crumpacker): And what happened to those contracts [173] when they got to California?

Mr. Hoddick: Object to that on the ground it is immaterial and irrelevant.

Mr. Crumpacker: It is a matter of financing of the company.

The Court: Yes. The objection is overruled.

Q. (By Mr. Crumpacker): What happened to those contracts which were sent to the mainland?

A. Well, after the finance company have received those contracts, they would accept—whether

(Testimony of Katsuyoshi Watanabe.)

they would accept or reject the credit, the ones that they had accepted, the proceeds would be deposited to the bank that we had on the mainland, which is the Bank of America at that time.

Q. Was that same procedure used with all contracts?

A. All contracts except we had those, as I said, that was rejected. Some of it was six-month contracts with small amounts, or a 90-day account, a cash deal, we call it, was not sent to the mainland.

Q. With the exception of those, the general procedure, you say, was to send them to the mainland?

A. The bulk of it was sent to the mainland.

Q. And they were discounted, is that the word?

A. Discounted, sir.

Q. That means what?

A. Was financed or the finance advanced the money to the [174] company. Whether it was on the contract, was on a nonrecourse or recourse, I am not sure of that. I am not positive which way it was, because it makes a difference whether it was recourse or nonrecourse.

Q. But in either case the discounted amount was received in exchange, is that right?

A. Yes; the proceeds was automatically deposited to the bank account.

Q. What percentage of these time contracts would you say were discounted, what percentage would you say were retained by the company?

Mr. Hoddick: Your Honor, we object, again,

(Testimony of Katsuyoshi Watanabe.)  
immaterial and irrelevant. I think we are a long way from the employees' tax withholding.

The Court: The objection is overruled.

Q. (By Mr. Crumpacker): Do you understand the question? A. Yes.

Q. That is, dollar-wise?

A. Well, I would say that in the—within the year period that we would have discounted in '52, my company record shows that he had discounted approximately about \$500,000, I think.

Q. 1952?

A. And '53 I would say about two; '54 I would say about fifteen—\$150,000.

The Court: When you speak of two, are you talking [175] about two dollars?

The Witness: No.

The Court: Two what?

The Witness: \$200,000.

Q. (By Mr. Crumpacker): What was the total amount of business during those years, '52—

Mr. Hoddick: Your Honor, might I suggest that '52 be eliminated, entirely outside of the scope of the indictment?

The Court: You may suggest; if you want to object, that is a different matter.

Mr. Hoddick: I object to it and move that the answer with regard to '52 be stricken.

Mr. Crumpacker: Let me rephrase the question in that respect.

Q. What was the total business during the years 1953 and '54?

(Testimony of Katsuyoshi Watanabe.)

A. '53, I would imagine, was about \$400,000, and '54, \$300,000.

Q. So that from one-half to two-thirds, approximately, of the business was discounted; is that right? A. Yes.

Q. Now, you say you prepared information for Mr. Abdul from which he could determine how goes it, is that what you call it?

A. Yes. It is a daily operation report; the amount of [176] sales, the amount of receipts, the amount of disbursements and the amount of contracts in transit.

Q. At the time you prepared these tax returns during the time that they were on his desk or in that folder, was there money available to pay this?

A. Well, our check record shows that they were overdrawn, heavily overdrawn.

Q. On what occasion?

A. On all occasions.

Q. All the time?

A. Just about all the time.

Q. But there were disbursements going out all the time, were there not? A. Yes, sir.

Q. So that it is true that there were some monies available, but, as you say, you were overdrawn at certain times. But my question is: Was there money during this period?

A. Yes; there were funds in there.

Q. Which could have been used to pay these taxes? A. Could have done.

(Testimony of Katsuyoshi Watanabe.)

Q. It just happened that they were used for some other purpose?

Mr. Hoddick: I object to that as leading and suggestive, your Honor.

The Court: Objection sustained. Is this a convenient [177] place to interrupt your examination?

Mr. Crumpacker: Yes, your Honor.

The Court: Ladies and gentlemen of the jury, you are excused for recess.

(A recess was taken.)

(After recess.)

The Court: The record will show the jury is present, the defendant and his counsel.

Q. (By Mr. Crumpacker): Before the recess, Mr. Watanabe, in response to my questions about monies available for the payment of these taxes, you, first, I believe, stated that you were overdrawn. What do you mean by "overdrawn"?

A. Our records, bank balance records were overdrawn, but the bank balance with the bank, there was funds to pay the taxes.

The Court: I could not hear the last part of that answer. You have a tendency to let your voice drop. You are doing better than you did at the start. Will you read the last answer?

(The record was read by the reporter.)

Q. (By Mr. Crumpacker): How can you account for the difference?

A. Well, at the end of the month the bank would

(Testimony of Katsuyoshi Watanabe.)  
send me the statement, also the canceled checks.  
Then I would reconcile those, the check balance, get  
the total amount of the outstanding checks and,  
actually, get the true balance from the bank.

Q. The difference, then, was due to the fact that  
the [178] checks were outstanding?

A. Yes, sir.

Q. Now, you say that you discussed this on sev-  
eral occasions, the delinquencies on several occasions  
with Mr. Abdul? A. Yes, sir.

Q. What suggestions, if any, did you give him  
with regard to—

A. On my suggestion to Mr. Abdul—my sugges-  
tion to Mr. Abdul was this: That if he couldn't have  
those checks sent in, he could very well send in only  
the reports.

Q. What was his response to that suggestion?

A. Well, he just nodded his head.

Q. Now, directing your attention to January 10,  
1955, did you have occasion to discuss this matter  
with Mr. Fiellin and Miss Burns?

A. Yes, sir; I did.

Q. Will you state what happened on that occa-  
sion?

A. Well, they questioned me about those—

Mr. Hoddick: Just one second. I'm going to ob-  
ject to that as calling for hearsay testimony unless  
it is shown it was in the defendant's presence.

Mr. Crumpacker: The question was: What took  
place on that occasion? I am not asking what was  
said.

(Testimony of Katsuyoshi Watanabe.)

The Court: Well, you had a conversation; is that right? [179]

The Witness: Yes, sir.

The Court: All right. Don't say what was said.

Q. (By Mr. Crumpacker): What was the subject of the conversation?

A. Those quarterly returns.

Q. And what did you advise them at that time?

Mr. Hoddick: I object to that as being entirely immaterial and irrelevant.

The Court: I think it is also objectionable on the ground of hearsay, Mr. Crumpacker. The defendant was not present.

Mr. Crumpacker: I am merely asking him what he advised them, not what they said.

Mr. Hoddick: My objection was that that would be immaterial and irrelevant unless he was following the directions of the defendant.

The Court: You might try to lay that foundation, if you can.

Q. (By Mr. Crumpacker): Will you state just what returns you were referring to as the nature of the conversation?

A. The '52 quarterly—for the four quarters, '52, '53 and '54.

Q. Will you state a little more in detail what was the nature of the discussion?

Mr. Hoddick: Your Honor, we will object to that as [180] going behind the hearsay objection.

The Court: The subject of the conversation was the quarterly returns. That is correct, is it not?

(Testimony of Katsuyoshi Watanabe.)

The Witness: Yes, sir.

Q. (By Mr. Crumpacker): All right. Now, could you specify which quarterly returns? In other words, was it the ones that you prepared or the ones that—just merely the ones that were delinquent? A. The ones that I had prepared.

Q. Now, specifically, which ones were referred to? A. The '53, '54.

Q. How many had you prepared for '53 and '54 at that time?

A. I prepared originals, also a duplicate, and there were two sets.

Q. Did this conversation have to do with the duplicates as well as the originals?

A. No; not the originals. The duplicates that was given to me in December.

Q. And those were the subject matter of the conversation at that time? A. Yes, sir.

Q. And what did you advise them with respect to the duplicates?

Mr. Hoddick: I object to that, your Honor; immaterial and irrelevant, no proper foundation. [181]

The Court: Objection sustained.

Q. (By Mr. Crumpacker): And who prepared the form for the fourth quarter of 1954?

A. I did, sir.

Q. When was that prepared?

A. January, '55.

Q. What did you do with that after you prepared it?

(Testimony of Katsuyoshi Watanabe.)

A. The same procedure. I prepared—drew the check, laid it on his desk, left it in his folder.

Q. What information was placed on that form?

A. The necessary information, sir.

Q. I show you Plaintiff's Exhibit No. 8 and ask you if you can identify that?

A. Yes, sir. That is the form that I prepared.

Q. What did you prepare along with the form, if anything?

A. Also the—in '55, the annual report form had —has been changed a little bit, compared with the previous years, and on the back of the forms, all the quarterly forms, quarterly reports, the form was to be typed in. And in doing so, this check for this last quarter should have been submitted to the District Director. In other words, this could not have been sent in without the check.

Q. And was anything else prepared along with that form?

A. The 2a's, that is the duplicate of the W-2 forms.

Q. They are not there; is that correct? [183]

A. No; not here, sir.

Q. What is this tape? Can you identify that tape?

A. That is the tape in balance with the payroll, individual record of the withholding taxes, the 2a forms.

Q. Who prepared that? A. I did, sir.

Q. Can you identify the signature on that form?

A. This belongs to Mr. Abdul.

(Testimony of Katsuyoshi Watanabe.)

Q. What did you do with that when you prepared it?

A. Well, this was prepared and check was drawn and it was left on his desk.

Q. And where were the duplicates of the first three quarters of '54 at that time?

A. The duplicates were in the file. You mean the retaining copy?

Q. No. I mean the—excuse me. There may be confusion. I don't mean the retained copy. I mean the duplicate originals which you had prepared in December.

A. The original of the duplicate, the second set, you mean?

Q. Second set. A. It was in his folder, sir.

Q. At the time that this was placed on his desk?

A. Yes, sir.

Q. When was it that you terminated your regular full-time [184] employment?

A. February, '55.

Q. 1955? A. Yes, sir.

Q. That is the month following preparation of this form? A. Yes, sir.

Q. Exhibit 8. Directing your attention to the month of March, on or about the 11th of March, did you have occasion to discuss with Mr. Abdul any of these delinquent forms, returns?

A. That was March, you said?

Q. Yes. A. Yes. I received a call—

Mr. Hoddick: Your Honor, I will object to the question, if he is getting into the subject matter,

(Testimony of Katsuyoshi Watanabe.) unless a better foundation is laid as to time, place and persons present.

The Court: Yes. You should lay a foundation. The witness started to say something about being called; is that correct?

The Witness: Yes; I was called at my employment.

The Court: And as a result of that call did you go out and see Mr. Abdul?

The Witness: Not at the time.

The Court: Well, proceed, Mr. Crumpacker.

Q. (By Mr. Crumpacker): You say you received a call from him? [185]

A. A telephone call. He wanted to know where the forms were, the retaining copies were. Then I told him that was in—

Q. Any particular form referred to?

A. He mentioned about the—in fact, what he actually had mentioned was what happened to all of the forms. So I had mentioned that it was in the safe, the left-hand drawer.

Q. The forms you are referring to as the retained copies—

A. Retained copies of all of the forms that we had prepared.

Q. And he asked you where they were located in the office? A. Yes, sir.

Q. Was that the sum and substance of the conversation? A. Yes, sir.

Q. Now, who prepared the return for the first quarter of 1955, if you know?

(Testimony of Katsuyoshi Watanabe.)

A. I believe I did, sir.

Q. And when was that prepared?

A. The first one was prepared April, '55.

Q. And what was prepared with the form, if anything?

A. Check was also—no check, just the form was prepared, and I made a notation that the check should have been made, since I wasn't employed there steadily, that a check should accompany the form. And I stapled a paper, sheet of paper, and made a notation on that of the amount of the check and to whom it was payable and when it was [186] due.

Q. You were not preparing the checks at that time? A. No.

Q. And you stapled this notice to the form?

A. Yes, sir.

Q. What did you do with the form?

A. I left it on his desk.

Q. I show you Plaintiff's Exhibit 9 for identification and ask you if you can identify that? Excuse me. That is Plaintiff's Exhibit 9.

A. This was taken from the original, the one I had prepared.

Q. That is not the one that you prepared?

A. No; because all of the forms that I received, the original had the Addressograph print there. This, I believe, is, looks like a typewriter. It is typed in. The forms that the Federal Director send is Addressograph-type print on the original.

(Testimony of Katsuyoshi Watanabe.)

Q. But that is for the same period you have referred to? A. Yes, sir.

Q. You identify the signature on that?

A. It belongs to Mr. Abdul, sir.

Q. And Plaintiff's Exhibit No. 10, can you identify that? A. This, also—

Q. Excuse me. Before answering that—strike that question. Who prepared the return for the second quarter of 1955? [187]

A. I believe I did, sir.

Q. And when was that prepared?

A. That was prepared in July, '55.

Q. And what was prepared with it, if anything?

A. All I prepared was the form and also the note, the amount due and to whom it was payable and when it was due, which was stapled to the form that was left on his desk.

Q. And you left the form with the note on his desk? A. Yes, sir.

Q. Now, I ask you, can you identify No. 10?

A. This also—the figures are from the original, but the form is not through an Addressograph. It seems like it has been typed in.

Q. But it is for the same period you refer to?

A. Yes, sir.

Q. And can you identify the signature on that?

A. It belongs to Mr. Abdul.

Q. Is there any way you can tell whether the information on Plaintiff's Exhibits 8 and 9—or 9 and 10 is the same as the information on the originals which you prepared? A. No.

(Testimony of Katsuyoshi Watanabe.)

Q. You can't tell from your present knowledge?

A. No.

Q. I show you Plaintiff's Exhibit No. 14 for identification, which is a series of photostats of the bottom half of [188] forms 941 and ask you if there is any way you can identify those?

A. This is the original. These are copies.

Q. Can you explain how you can identify those and if so what they are?

A. Well, first of all, I—the dates, where it says return for the calendar year, I would put an asterisk mark, and one case here has the word "copy." That meant that I made a duplicate copy in some cases.

Q. On how many of those does that appear?

A. Well, on this here it says—one, two—two copies says the word "copy."

Q. Can you identify any of the information contained in those, specifically referring you to the schedule of employees. Do you recognize the names and the salaries?

A. I can recognize the names and also recognize the—this one here, it shows the wages that were paid for the past years, back wages, certain employees. I remember preparing that particular form.

Q. You recall preparing such a form?

A. Yes, sir. We had a good size former employees that we had to pay back wages, and this is one of them. Because at the time I was employed, a number of these employees was not employed.

Mr. Hoddick: Just one second, your Honor. We are getting off on an irrelevant track here. Might

(Testimony of Katsuyoshi Watanabe.)

I suggest that [189] counsel ask questions so we don't have this narrative-type testimony continuing?

The Court: Yes. The witness does amplify at times a little bit too much.

Q. (By Mr. Crumpacker): Let me ask you, can you tell whether these are copies of the forms which you prepared which you have already testified to?

A. Yes; those are copies of the forms that I have prepared.

Q. Which is the bottom half?

A. Bottom half of the 941.

Q. Can you testify whether or not these are copies of the originals which you prepared?

A. No.

Q. You don't know? A. I don't know.

Q. Now, you say that you worked part time until approximately what time, what date?

A. Some time in September, I think.

Q. 1955? A. Right.

Q. Directing your attention to that month, do you recall on or about September 8th having a discussion about any of these delinquent returns with the defendant? A. Yes; I did. [190]

Q. Will you state what the circumstances were, where and when?

A. Well, he called me at my employer's office and he wanted to know, again, what happened to the tax forms for certain periods in 1955. And I had instructed that I had prepared all the forms and the retaining copy is in the tax receipt folder.

(Testimony of Katsuyoshi Watanabe.)

Q. What specific forms or returns were referred to at that time? A. '55.

Q. Any other?

A. Yes. He also mentioned about the '52.

Q. '52? A. Yes, sir.

Q. Or '53?

A. No. This was the '52 that we have not submitted. And that is when—at the time he mentioned that, I had mentioned to him that I just received only three copies, or three blanks, and we were supposed to have received four copies, a new set. I had prepared the three for '53, but none for the end of the '52 quarter.

Q. Aren't you a little mixed up on your dates? You previously referred to three for 1954, duplicates?

A. Let's see. Yes; '53. Wasn't it '53?

Q. In your testimony previously you referred to preparing [191] duplicates for the first three quarters of 1954, if you recall. Would it help you if I showed you some of the exhibits you have already referred to? Referring you to 4, 5 and 7.

A. '53, I prepared the depository receipt. Yes, '54. I remember preparing the depository receipts in '53, that is right.

The Court: I can't hear. What did you say just then?

The Witness: Oh, I said in '53 I recall preparing depository receipts for the first three quarters, and the third—fourth quarter there was no depository receipt.

(Testimony of Katsuyoshi Watanabe.)

Q. (By Mr. Crumpacker): Now, with that in mind let me ask you this: In this conversation you had in which returns were referred to by Mr. Abdul, this conversation you just mentioned—

A. The one in '52 and '55.

Q. Didn't you just say that it was in '53 that you prepared depository receipts up until the last quarter?

A. Yes. Oh, yes, the third—the fourth quarter of '53.

Q. '53? A. Yes.

Q. That one was mentioned. What was the discussion you had with him about that one?

A. Well, he mentioned that—what had happened to the reports, knowing that I had calls regarding these reports and we had requested blanks for the '53 quarter, we just received three [192] of them, and that I could not prepare the new duplicates because no forms was available at the time.

Q. During the period that you were there at Home Furniture Company, what was the payroll, what salaries were paid, if you recall?

A. Well, Mr. Abdul was paid \$800 on a check, another \$800 was applied to his notes payable, account called notes payable. That was credited to the account. Mrs. Abdul was paid \$800 a month. Then the salesmen that he had at the earliest time, they were getting paid on a commission basis, then they got salary of \$300 a month. The secretary, her secretary was paid \$250 and she ended up with three, if I am not mistaken.

(Testimony of Katsuyoshi Watanabe.)

Mr. Hoddick: How much was that?

The Witness: Three. I started off with 250 and ended with three.

Mr. Hoddick: Your Honor, the witness' voice is still dropping at the end of his answers. I heard what he started with and didn't hear what he wound up with.

The Witness: I wound up with three.

The Court: You started at \$250 and you ended at \$300; is that right?

The Witness: Yes, sir.

The Court: Keep your voice up.

Q. (By Mr. Crumpacker): You referred to Mr. Abdul's salary of \$800 and a balance credited [193] to—

A. He received a check, gross figure of \$800, and also another \$800 was on a—subject to percentage on the gross of sales at the end of the year. He had an account called notes payable that he would accrue this \$800, the second \$800, after the tax was deducted, and it would be applied against the loan. In other words, he would accumulate whatever wages paid to him on that basis.

Q. With withholdings taken from both?

A. Both, of the \$1,600.

Q. And you say it was credited to a loan account. What was that loan account?

A. Well, I—when I first started working for Mr. Abdul, I questioned him about the accounts, especially on the loan payable account, and to my best knowledge I remember him saying that it was

(Testimony of Katsuyoshi Watanabe.)

similar to a loan that he either would make to the company or the company—it was vice versa, either he will have in excess or he will owe the company.

Q. What was the balance, which way was the balance in that account during the years that you were there?

A. Well, at the end of the year, I believe he owed the corporation.

Q. Will you repeat that?

A. I think at the end of the year, 1954, he owed the company.

Q. That is on that account you are referring to? [194]

A. Yes; notes payable, loans payable.

Q. That included— A. The \$800.

Q. —the credits which he had received from the \$800 you have already referred to?

A. Yes, and whatever he drew against it.

Q. So that over and above that there was still a net which he owed the company? A. Yes, sir.

Q. For the year 1954. Who maintained that account in the books?

A. I made all the entries on the books.

Q. What were the drawings from that account for, if you know?

A. Well, some instances—for instance, when it comes through petty cash vouchers, and I wasn't familiar with the type of disbursement, I would go and ask him about it and he would instruct me to put it in the loans payable account. And sometimes there were checks that were made payable to cer-

(Testimony of Katsuyoshi Watanabe.)

tain parties and I wasn't familiar with them, I would question him again and he would have that particular transaction added to the loans payable account.

Q. In other words, they were checks for personal matters?

A. Yes; personal matters.

Q. Funds paid out for him, personally? [195]

A. Right.

Q. Do you know what the balance was at the end of '53 in that account?

A. '53? Not the—I will say, probably about—say about fifteen, probably, he owed the company.

Q. Fifteen what? A. Thousand.

Q. Could you tell if you were able to refer to your account records which you have kept?

A. Yes.

Q. Do you know approximately what the balance was at the end of 1954?

A. I believe in '54 it was about 25, I believe.

The Court: 25 what?

The Witness: 25,000.

Q. (By Mr. Crumpacker): After all his salary was credited to him? A. Yes, sir.

Q. And you say Mrs. Abdul received, during the time you were there, \$800 a month?

A. \$800 a month, sir.

Q. Who owned the building that the company is in, if you know?

A. There was a fellow by the name of Theodore

(Testimony of Katsuyoshi Watanabe.)

Richter. I believe his agent was Mr. [196] Clutterbuck.

Q. What arrangement, if you know, was made with respect to rental and so on?

A. Well, he had also a deposit on rental, a leasehold, and I also questioned him about that particular account and he told me that the balance that he had was advance deposit against the leasehold, and that in event that he decided to purchase the building, the property, I should say, that whatever rental that he had paid on this deposit would be credited as a down payment.

Mr. Hoddick: Just one second. Your Honor, I move to strike the last answer of the witness as having no relevance to this case.

The Court: The objection is overruled. The motion to strike is denied.

Q. (By Mr. Crumpacker): What was the amount of the advance, do you know?

A. Believe it was about \$5,400.

Q. Do you know whether or not the building was ever purchased by him or by the company?

A. I heard that he had purchased it.

Q. You don't know of your own knowledge, though? A. Not of my own knowledge.

Mr. Hoddick: May that answer be stricken, then?

The Court: Yes; it will be stricken and the jury instructed to disregard it. [197]

Mr. Crumpacker: I have no further questions at this time, your Honor.

(Testimony of Katsuyoshi Watanabe.)

Cross-Examination

By Mr. Hoddick:

Q. Mr. Watanabe, you say that you continued working part time for Mr. Abdul at the Home Furnishing Company, Limited, until about September of 1955? A. I believe so.

Q. Do you know for a fact that the returns for the year 1954, the quarterly returns, had not only been filed but paid by the time you left your part-time service with the defendant?

A. I believe I read it in the paper.

Q. Didn't you know for a fact while you were working there as his accountant on a part-time basis that those returns had been filed and paid? I refer to the returns for 1954.

A. I remember reading in the paper.

Q. Mr. Watanabe, at the end of each month did you not make a reconciliation of the checks which were returned from the bank? A. Yes, sir.

Q. And in the course of your part-time employment as an accountant, bookkeeper, for the firm in 1955, did not the checks covering payments of these returns for 1954, were they not returned to the company and cleared by you?

A. In '54? Yes. [198]

Q. So you do know that the taxes were paid for 1954 prior to the time you left the employ of the defendant? A. No.

Q. Well, wasn't it your testimony just now that

(Testimony of Katsuyoshi Watanabe.)

those checks did clear through the bank and come back so that you could reconcile them?

A. No. What I said is that I reconciled the bank statement.

Q. Would you reconcile it each month?

A. Each month.

Q. Do you deny that checks covering payment for taxes for 1954 did not come back negotiated while you were still employed there as an accountant?

Mr. Crumpacker: I will object to the question as being ambiguous. It is a double negative.

The Court: Overruled. Do you understand the question?

Mr. Crumpacker: May the question be read?

The Court: Yes.

(The record was read by the reporter.)

Mr. Hoddick: It is an awkward question. I will withdraw it.

The Court: Very well.

Q. (By Mr. Hoddick): Do you deny, Mr. Watanabe, that while you were working as part-time bookkeeper and accountant for Home Furnishing, Limited, in 1955— [199] A. Yes.

Q. —that checks payable to the District Director of Internal Revenue for withholding tax for the year 1954 came through the bank and through your hands when you reconciled these checks at the end of each month?

A. When did he pay the taxes, '54 taxes?

(Testimony of Katsuyoshi Watanabe.)

Q. I am simply asking you whether you saw any such checks? A. No.

Q. Did you continue reconciling these bank statements to checks throughout the time you were employed there? A. Up to '55, February.

Q. You did not do that after February, 1955?

A. I had another problem in reconciling checks, because Mr. Abdul was writing out the checks, and many times the checks wasn't recorded. I couldn't tell who the check was payable to.

Q. I am not inquiring as to whether you were having a problem reconciling the checks. I am asking whether you, in doing your reconciliation work, whether you saw checks which had been cashed by the District Director of Internal Revenue covering the payments of tax for the period 1954?

A. No.

Q. Did you examine the checks returned from the bank during the year 1955 while you were working as part-time bookkeeper? [200] A. No.

Q. In other words, you did no reconciliation after you left full-time employment?

A. I may have done a few times. I am not sure.

Q. And the only thing you know about payments of these taxes is what you say you read in the newspapers? A. That he had paid the tax.

Q. When did you stop work as a full-time employee? A. February, 19—

Q. When in February?

A. I probably stopped at the 14th, if I remember right.

The Court: Is this a convenient place to interrupt your cross-examination?

Mr. Hoddick: I think so, your Honor.

The Court: Ladies and gentlemen of the jury, again, before excusing you, you are instructed not to discuss this case with anyone, allow no one to discuss it with you, avoid hearing or reading anything about it, and form no opinion about it. You are excused until 9:00 o'clock tomorrow morning.

(The jury leaves the courtroom.)

The Court: The Court will recess until 9:00 o'clock.

Mr. Crumpacker: Your Honor, may I at this time, I just want to mention that I have a witness coming from Kauai—in fact, she is here—but her testimony, I didn't want to take until the end of Mr. Watanabe's. But since they are not [201] going on tomorrow afternoon, I want to ask if we could put her on prior to finishing cross-examination of Mr. Watanabe tomorrow, or unless the cross-examination is completed before noon, I would like to have ample time to get her on and off before noon.

The Court: If necessary, we will stay on afternoon, not later than 12:30. Will that take care of your problem?

Mr. Crumpacker: Well, I hope so.

Mr. Hoddick: I just asked counsel what the name of the witness was.

Mr. Crumpacker: Janet Yamamoto.

Mr. Hoddick: We don't have any objection, your Honor, if he wants to withdraw the present witness.

The Court: Well, I prefer not to call witnesses out of order unless it is absolutely necessary. We will see how cross-examination goes, and if necessary, he can call her out of order later on in the morning.

Mr. Crumpacker: It shouldn't take more than one hour for her direct and cross, I would estimate.

The Court: That is one of those estimates.

Mr. Crumpacker: Well, her testimony should be brief, but I don't know.

The Court: Court will adjourn until 9:00 o'clock tomorrow morning.

(The Court adjourned at 4:00 p.m.) [202]

Honolulu, T. H., November 28, 1956

(The trial resumed at 9:00 a.m.)

The Clerk: Criminal No. 11072, United States of America, Plaintiff, versus Daniel L. Abdul, Defendant, for further trial.

Mr. Hawkins: Ready for the defense, your Honor.

Mr. Crumpacker: Ready for the government.

The Court: Very well. The record will show the jury is present, the defendant and his counsel. Mr. Watanabe.

## KATSUYOSHI WATANABE

a witness on behalf of the Plaintiff, having previously been sworn, resumed and testified further as follows:

Cross-Examination  
(Continued)

By Mr. Hoddick:

Q. Mr. Watanabe, what is your background as far as your work as a bookkeeper is concerned?

A. Well, I was employed at the Island Radio.

The Court: You will have to keep your voice up. Let's start off strong this morning and keep on going that way.

A. (Continuing): Employed at the Island Radio for about three years.

Mr. Felzer: If the Court please, I still can't hear.

A. (Continuing): I was employed at the Island Radio [203] Company for about three years.

Q. (By Mr. Hoddick): That was before you went to work for Home Furniture Company, Limited?

A. Yes, sir. No; that is, the bookkeeping was back in '48 up to 1950, I believe. I was working at the Easy Appliance Company about a year. I wasn't a bookkeeper, though. I was a service manager at the time.

Q. Have you had any formal education in bookkeeping or accounting?

A. I went to the Galusha Business College.

Q. And you studied bookkeeping there?

(Testimony of Katsuyoshi Watanabe.)

A. Accounting; yes, sir.

Q. Have you ever practiced as a public accountant? A. No, sir.

Q. But you have served as a bookkeeper both with the Island Radio and with the Home Furnishings Company, Limited? A. Yes, sir.

Q. Have you had any other bookkeeping experience? A. No, sir.

Q. How many hours did you put into the study of bookkeeping and accounting at the Galusha Business College?

A. One whole school year, sir. That was from September to graduating in August.

Q. And what year was that?

A. '46 to '47. [204]

Q. Home Furnishings Company, Limited, also had a firm of auditors, did it not? A. Yes, sir.

Q. Lemon and Hough? A. Yes, sir.

Q. And they would come in and review your books and your records? A. Yes, sir.

Q. Approximately how often?

A. They would come in once a year at the end of the year. But also, if I had any question, of course, I could call the auditors any time.

Q. And did you do that occasionally?

A. Yes, sir; I did.

Q. You worked fairly closely with them, did you not? A. Yes; I did.

Q. And, generally speaking, they didn't complain about the way you were discharging your

(Testimony of Katsuyoshi Watanabe.)

duties? They were satisfied with the way you were doing it?

A. I think they were satisfied, sir.

Q. You don't remember any particular complaint on that score?

A. No; no complaint at all, sir.

Q. And generally you kept your bookkeeping up day by day? You didn't let it get behind you, did you? [205] A. No, sir.

Q. In other words, you worked quite diligently at the job? A. I believe so.

Q. When you testified yesterday concerning the keeping of payroll records and the making of journal entries in the account to which you credited or debited the entries— A. Yes, sir.

Q. —all of those things were done in accordance with the normal principles of bookkeeping and accounting?

A. Yes, sir. It was the normal procedure with the Home Furniture Company.

Q. But there wasn't anything unusual about the way these functions were discharged at the Home Furnishings Company, Limited?

A. I was following instructions, sir.

Q. Well, you were also applying the principles which you had learned in your course at Galusha Business College, weren't you? A. Yes, sir.

Q. You were asked some questions yesterday by Mr. Crumpacker concerning the status of the bank account of the Home Furnishings Company, Limited? A. Yes, sir.

(Testimony of Katsuyoshi Watanabe.)

Q. And you drew some distinction between an account that [206] is overdrawn and a situation that prevails when you have funds available? Would you advise the jury and myself again as to what that distinction is?

A. Well, the bank, as far as the bank balance in our books, it was heavily overdrawn and we wrote several checks even though there was no funds in it. Our disbursements was much greater than the receipts.

Q. By that you mean that the total of the checks outstanding was greater than the total of the balance shown on the bank statement?

A. No; in the books, in the ledger. In the bank account with the bank, we had some balances in the bank.

Q. Yes, but didn't you consistently have a greater total of checks outstanding or almost always have a greater total of checks outstanding than you had balance in the bank? A. Yes, sir.

Q. So that if a check were to be drawn for a particular purpose under those circumstances and were to go through, to be negotiated—

A. Yes, sir.

Q. —and other checks had been negotiated before it was— A. Yes, sir.

Q. —there was every possibility that that check would bounce, wasn't there?

A. Yes, sir; they would have. [207]

Q. And, as a matter of fact, that is exactly what

(Testimony of Katsuyoshi Watanabe.) happened in connection with Plaintiff's Exhibit No. 6, this check for \$1,794.36?

A. Yes, sir, that is exactly what happened.

Q. In other words, when this check was drawn not only was the bank account overdrawn but also there were insufficient funds available to cover the check? A. Right.

Q. You know, don't you, that to draw a check against an account that has insufficient funds and negotiate it is a violation of the Territorial statute?

A. Well, I didn't sign the check. I think the person who signs the check—

Q. No; but I say that to do that is a violation of the Territorial statute? A. I don't know.

Q. You don't know?

A. I don't know actually.

Mr. Hoddick: May I have just a moment?

The Court: Yes.

Mr. Crumpacker: Your Honor, I see defense counsel referring to some books. If this witness is to be cross-examined on the books, I would appreciate an opportunity to examine them myself, not having had a previous opportunity.

The Court: There is nothing pending before the Court. [208] I have no idea what counsel are examining.

Q. (By Mr. Hoddick): In your testimony yesterday with reference to the funds being available, it would also be subject to the contingency that there weren't a greater number of checks or so

(Testimony of Katsuyoshi Watanabe.) many checks outstanding that those funds would have been exhausted, is that true?

A. Yes, sir.

The Court: I couldn't hear your answer.

The Witness: Yes.

Mr. Crumpacker: Your Honor, I didn't hear the question. May I have the question read?

(The reporter read the last question and answer.)

Q. (By Mr. Hoddick): And again referring to Exhibit 6, this is an example where the funds were exhausted? A. Yes, sir.

Q. Well, as of now you are not prepared to state whether there were regular sufficient funds available to pay these taxes or not, are you, from your recollection?

A. Well, Mr. Hoddick, as I said before, he was given a regular statement of the daily summary. If he comes to me and wants certain checks, I will type it out.

Q. As a matter of fact, Mr. Watanabe, Mr. Abdul was even more careful than that. He got a daily statement from the bank, did he not, giving what his balance was on that particular day? [209]

A. You mean from the bank?

Q. Yes.

A. He gets the balance from the bank at the end of the month, the statement.

Q. And didn't he regularly communicate himself or through you with the bank to check as to

(Testimony of Katsuyoshi Watanabe.)

what his daily balance was?

A. That wasn't a normal practice, though.

Q. You recall it being done from time to time?

A. A few times.

Q. Do you recall having a conversation with me on Friday, I think, of last week, Thursday or Friday? A. Yes, sir.

Q. At your office over at the Trading Center?

A. Yes, sir.

Q. And do you recall advising me at that time that there were daily statements obtained from the bank as to what the balance was? A. No.

Q. If you did so advise me, that would be an error, that was not correct?

A. I don't believe I said that, Mr. Hoddick.

The Court: Keep your voice up.

Q. (By Mr. Hoddick): Then I must have misunderstood you? A. I believe so.

Q. You testified that with reference to certain accounts [210] that were in transit, that the contracts— A. Contracts?

Q. —that were sent to the mainland for discount purposes— A. Yes, sir.

Q. —and represented monies to be received by the Home Furniture Company, Limited, if they were accepted as discount accounts—

A. Yes, sir.

Q. —and you testified that these sums when deposited directly or automatically, I believe your phrase was, in the Bank of America on the west coast— A. Yes, sir.

(Testimony of Katsuyoshi Watanabe.)

Q. —when the contracts were accepted by the discount house? A. Yes, sir.

Q. Now, is it not true that the account with the Bank of America on the west coast was closed in 1952?

A. Exactly when it was closed, Mr. Hoddick, I don't recall, but it was attached. I believe it was attached.

Q. But the bank account was not used by Home Furniture Company, Limited, during the years 1953, '54 or '55, was it, for purposes of accepting deposits from the discount house?

A. I believe it was transferred to another bank.

Q. And it was transferred to a bank here in the Territory? [211]

A. Locally, because I believe it was attached.

Q. And consequently you not only had to wait for the accounts to get down there and to be accepted by the discount house but you also had to wait for the receipts to return from the west coast to be deposited here?

A. No; it goes further than that, Mr. Hoddick. The finance people stopped taking our accounts one time. What time exactly it was, I don't know. I can't recall. The reason is that—

Q. Just one second. I am going to object that your answer is not responsive.

Mr. Hoddick: Will you read the question to the witness?

(The reporter read the last question.)

(Testimony of Katsuyoshi Watanabe.)

Q. (By Mr. Hoddick): Is that correct?

A. Yes, sir. There was a schedule, we would receive the schedule.

Q. You mean the discount house would send Home Furniture Company, Limited, a schedule of the accounts which they had accepted?

A. Accepted.

Q. And how much was on the way?

A. How much was deposited, not on the way, deposited.

Q. When they accepted the contract, did they send the money directly to Home Furniture Company? [212]

A. After it was closed and attached, then they sent it back to here.

Q. We are talking about the years 1953, '54 and '55, Mr. Watanabe.

A. I don't recall what year it was but after it was attached it was sent back.

Q. It was sent to Home Furniture Company?

A. To Home Furniture Company.

Q. You got a check for the total of the contracts they had accepted?

A. Not the total contracts. The net proceeds.

Q. Well, eliminating the discount?

A. All right.

Q. And then that check in turn was deposited by you in your bank account here?

A. Locally, yes, sir.

Q. You testified concerning a manila folder?

A. Yes, sir; that Mr. Abdul kept in his desk,

(Testimony of Katsuyoshi Watanabe.)  
and in which he placed certain checks which were not put through for collection, not sent through for payment.

Q. But you remember such a folder?

A. Oh, sure; definitely.

Q. Now, that was in Mr. Abdul's kuleana, wasn't it? You didn't have anything to do with the management of it? A. No. [213]

Q. And what checks were in there at any one time, or how much they totaled to is something that you do not know?

A. Well, our bank statement showed. I mean, the reconciliation showed that we had at times ten to fifteen thousand dollars outstanding and a good bulk of it was in the folder.

Q. Did you ever go through the folder and total the checks that were in there so you knew how much was in the folder and how much was outstanding?

A. Yes, sir. In fact, he sometimes would bring the folder to me and said, would you make a list for me what this would total out to, what was actually outstanding. He would bring it to me and he would ask me to make him a schedule on that.

Q. And how many times did he do that and when?

A. Well, I can't recall when it was, but I will say a few times.

Q. A few times during all the time that you worked for him? A. Yes, sir.

Q. What do you mean by a few, a couple?

A. No. I would say about a half a dozen.

(Testimony of Katsuyoshi Watanabe.)

Q. About a half a dozen times? And when was the last time that he asked you to do that?

A. That was in '54, I believe.

Q. Do you know when in '54? [214]

A. No; I don't recall exactly what month it was.

Some time in '54.

Q. Do you know approximately? Was it in the summer? A. I can't recall, sir.

Q. Just some time in '54?

A. Some time in '54.

Q. You have no recollection? Isn't it the fact, Mr. Watanabe, that the 941 quarterly tax returns for the first two quarters of 1955 were prepared by Miss Nogami? A. I prepared those forms.

Q. You are sure you did?

A. I got the figures.

Q. You are certain that Miss Nogami didn't do it?

A. Unless she had copied from my duplicate.

Q. And do you recall testifying yesterday that these forms for the first quarters of 1955 were placed together with a prepared check on Mr. Abdul's desk for signature?

A. I did not say that. There was no checks attached to it. I mentioned that there was a note attached to the forms.

Q. But you attached no checks?

A. No checks.

Q. Do you know whether Miss Nogami prepared a check to go along with the forms?

A. I don't recall. I don't remember.

(Testimony of Katsuyoshi Watanabe.)

The Court: Will you please read the question and [215] answer?

(The reporter read the last question and answer.)

Q. (By Mr. Hoddick): Mr. Watanabe, when I talked to you the other day, do you recall mentioning this folder to me at that time?

A. I believe I did.

Q. And do you recall my asking you what was contained in that folder?

A. Yes; I think—yes; I believe you did.

Q. And do you recall telling me that this was, in substance, that this was in the nature of a hold-back folder and that Mr. Abdul frequently put checks in there rather than send them for payment?

A. Yes, sir.

Q. Because he lacked sufficient funds to cover them? A. Yes, sir.

Q. And you further recall my asking you whether there was included in this folder checks for payment of the federal withholding taxes?

A. I believe you asked me.

Q. And you told me that there were some checks for the Internal Revenue Service in this folder?

A. Yes, sir.

Q. And I asked you whether you knew whether they were all the checks there for the Internal Revenue Service for these [216] periods, that is, first three quarters of '54 and two quarters in '55 and

(Testimony of Katsuyoshi Watanabe.)

the last quarter of '53, and you said that you did not know?

A. I am not sure. I don't recall saying that I wasn't sure. I wasn't sure especially of the '55, because I remember not making out the checks, the '55 checks, Mr. Hoddick.

Q. You are not sure today just how many or which checks to the Internal Revenue Service were enclosed in that folder, are you?

A. The ones that I had made I definitely seen those checks. Those that I had not made, I haven't seen at all.

Q. You mean all of the checks which you made payable to the Internal Revenue Service were in that folder? A. At the time I left, yes.

Q. You are not speaking of all the checks that you made during the entire time that you were employed by Mr. Abdul, are you?

A. No; the checks were stapled to the forms at the time I left.

Q. And that was a process which you had followed from the time that you started, wasn't it?

A. Yes.

Q. Well, the checks that were made up in the beginning were not put in the folder or kept in the folder?

A. When you said beginning, what beginning is that? [217]

Q. I am trying to find out from you as to what checks you saw in that folder that had been made

(Testimony of Katsuyoshi Watanabe.)  
payable to the Internal Revenue Service and not sent through for collection, which ones?

A. '54. I have seen those.

Q. All of '54?

A. Yes; I have seen the '54's.

Q. All four quarters of 1954?

A. Also the new check, the Central Pacific Bank, too.

Q. Also the which?

A. You see, in '54 I made a new batch of checks to replace the old ones. I have seen the old ones and I also saw the new ones.

Q. What did you do with the old one?

A. That was voided.

Q. What did you do with them?

A. I left it in the folder.

Q. Did you see any other checks in that folder aside from the ones covering the four quarters of 1954?

A. I did see the ones in '53, the end of the quarter.

Q. You are talking about the last quarter?

A. Fourth quarter, yes.

Q. You made quite a bit of testimony yesterday about, you testified yesterday to making duplicates from the copies of the original 941 returns?

A. Yes, sir. [218]

Q. Do you recall that? A. Yes, sir.

Q. And the duplicates which you made, the duplicate originals, were exactly the same, were they not, as the copies which you took them from?

(Testimony of Katsuyoshi Watanabe.)

A. Right.

Q. Which means that the duplicate originals were exactly the same as the original originals?

A. It should be exact.

Q. And those returns were made up from the regular books and records of the corporation?

A. Yes, sir.

Q. As a bookkeeper and as an accountant, you were satisfied that they were entirely accurate?

A. I was satisfied when the auditors made the audit, sir. I wasn't satisfied until the audit was made at the end of the year, sir.

Q. Well, you had done the job and you had done it to the best of your ability, that's correct, isn't it?

A. Yes, sir.

Q. And when the auditors audited it, it made you feel secure? A. Yes, sir.

Q. You testified to having visits from a Miss Burns of the Internal Revenue Service? [219]

A. Yes, sir.

Q. And I assume that you gave her access to these same books and records from which you had prepared the returns?

A. I gave her, after I had consulted Mr. Abdul, as I previously said—I always went out to see Mr. Abdul for any of the information as to release—

Q. But information with reference to the tax liability of Home Furniture Company, Limited, for withholding taxes— A. Yes, sir.

Q. —that was always accurately available in books and records of the company, wasn't it?

(Testimony of Katsuyoshi Watanabe.)

A. When I was there, yes.

Q. You are including when you were there on a part-time basis as well as your full-time work?

A. No; when I was there full time.

Q. What you mean, then, is up to February of some date of 1955? A. Yes, sir.

Q. And this accurate information relative to the liability—this accurate information was received—this accurate information relative to the withholding tax liability of the Home Furniture Company, Limited, was available to the representatives of the Internal Revenue Service, was it not?

A. It was available.

Q. With reference to the return for the last quarter of [220] 1954, when did you prepare that return? A. Some time in January, sir.

Q. Do you recall when in January?

A. It was before the 31st. In other words, it was prepared for the due date.

Q. When you prepared one of these returns, you would type the date in at the time that you prepared it?

A. Sometimes I did; sometimes I forgot.

Q. Well, I hand you Exhibit No. 8 and ask you if the date January 19, 1955, that appears there was typed in by you?

(Handing a document to the witness.)

A. You are asking me whether I typed this date here?

Q. That's right.

(Testimony of Katsuyoshi Watanabe.)

A. If you ask me if I did, I am not sure, Mr. Hoddick.

Q. Well, did you usually type up the forms or did you just do a rough draft of them and then would the secretary type them?

A. Well, actually this is how I did it, Mr. Hod-dick: I made a rough draft first; then I would copy it on this 941, there were times when Miss Yasuda had asked me, she asked me if she could type that for me because she did the typing before for the former bookkeeper, so I had mentioned to her that it was all right, that I could do it, that she could do it.

Q. Would you then, if it were typed by the sec-retary rather than by yourself, would you then re-view the copy that [221] had been typed by the sec-retary to make sure that it was accurate?

A. Yes, sir.

Q. So, regardless of whether you typed it or whether the secretary typed it, the date which ap-pears on the face of the form— A. Yes, sir.

Q. ——would be the date when the typing was done, is that correct, or when it was submitted to Mr. Abdul for signature?

A. This is the day I would have typed it and submitted it to Mr. Abdul.

Q. In other words, in preparing these forms, you didn't make them up some time in February and then date them back to January 19, did you?

A. No; because I would make a check. I would draw a check against it, too, at the same time.

(Testimony of Katsuyoshi Watanabe.)

Q. What I am getting at is that the date that appears on the 941 represents the date within a day one way or another when the job was actually done?

A. Yes, sir.

Q. You testified yesterday that a check was prepared in connection with this Exhibit No. 8?

A. That is the quarter of '54?

Q. That's right; last quarter. [222]

A. Yes, sir.

Q. And that check and the form were placed together on Mr. Abdul's desk? A. Yes, sir.

Q. And do you recall seeing him put this form and that check in his manila folder?

A. I haven't seen it, but I have seen it in there many times.

Q. You saw this in there many times?

A. Yes.

Q. How many times? A. The forms?

Q. No; I am talking about this form, this Exhibit No. 8.

A. Well, I have seen it—let's see—at least half a dozen times.

Q. In the manila folder? A. Sure.

Q. And over how long a period of time did you see it? Half a dozen times in the manila folder?

A. Within two months.

Q. Over two months?

A. Within two months.

Q. Well, was it half a dozen times over two months or within the first two weeks of the two months?

(Testimony of Katsuyoshi Watanabe.)

A. Within the first week of two months. I would say. [223]

Q. You looked in that? You looked in that folder six times during the first week of the two months?

A. Well, I believe so, because he had it all scattered at times, scattered on his desk.

Q. What you meant to say was that you saw it in the folder over a period of a week and you saw it approximately six times in that folder during the week, is that correct?

A. Yes; I would say I have seen it.

Q. Pardon? A. Yes.

Q. Was it your practice to have reference to that folder, that would be every business day of the week, six times? A. It was on his desk.

Q. I understand.

A. If you had seen his desk with papers on it the way he had it, it was always scattered and we—

Q. My question was whether it was your practice to look at this manila folder six times during the period of a week?

A. Well, in fact, what I did is when it was scattered, and I felt that when I was responsible in that office, when I saw it scattered what I did is, I clipped it together and put it in the folder.

Q. You put these things in that folder, too, did you? A. When it was scattered, yes.

Q. You don't know whether he had it in the folder or [224] not but you would see it on his desk and you would pick it up and put it in the folder?

(Testimony of Katsuyoshi Watanabe.)

A. If I would see the checks were scattered.

Q. This was his holdback folder, was it?

A. Yes, sir.

Q. How long did this Exhibit No. 8 stay in that folder? A. From the time that I prepared it.

Q. Until when? A. Until I left.

Q. Until you left? A. Yes, sir.

Q. And that is some time in the middle of February of 1955? A. Yes, sir.

Q. You are sure of that?

A. I believe so. I am sure of that.

Q. Do you recall testifying earlier this morning that the last time you looked through that folder was in 1954 some time and you couldn't recall the date? A. Yes; I believe I said that.

Q. And you realize this return was prepared on January 19, 1955? A. Yes.

Q. So you made a mistake this morning when you said the last time you looked through the folder was in 1954? [225]

A. Well, if that is what you call it.

The Court: I can't hear.

A. (Continuing): I mean, I may have been a little puzzled on that.

Q. (By Mr. Hoddick): Well, you made a mistake? That's about the size of it?

A. I made a mistake, yes.

Q. And when you say that this was in the folder and remained there until the time that you left, which was some time around the middle of February, 1954—and you will notice that this was filed

(Testimony of Katsuyoshi Watanabe.)

with the Internal Revenue Service on February 2nd, 1955—that is another mistake?

A. You are sure this is not the duplicate, though?

Q. It was filed on February 2nd, '55, wasn't it?

A. It says received on February—

Q. With remittance?

A. —with remittance.

Q. So that maybe this one wasn't held in the folder? A. It was maybe held up to January.

Q. But as to whether it was held until the time that you left, you are not sure?

A. Maybe not until the 15th, February 15th.

Q. As a matter of fact, Mr. Watanabe, you are unable to testify now from your own knowledge as to what checks were in that folder at any particular time? You just don't remember? [226] There were so many that went through there over such a long period of time?

A. I remember many. I have seen my reports in there.

Q. I understand that. But what reports and when you saw them, you can't tell us now, can you, any more than you could tell me the other day when I was in your office? A. I could.

Q. You could? A. Sure.

Q. You have a better recollection today than you did the other day?

A. I think it is the same.

Q. How many times have you discussed this case

(Testimony of Katsuyoshi Watanabe.)  
and looked at these exhibits with the United States attorney before taking the stand?

A. The first was during the jury trial.  
Q. The grand jury?  
A. The grand jury trial. Then on Sunday.  
Q. You worked with him Sunday on these exhibits?  
A. Yes, sir. I mean, he showed them to me.  
Q. And it was after you talked with him Sunday and you looked through all of these exhibits that your recollection was refreshed that they were all held in this folder that Mr. Abdul had in his desk?  
A. No; I won't put it in that sense. [227]  
Q. How would you put it?  
A. That I have seen reports. I have seen those that I had prepared. I have seen it in the folder, the '54 quarter.  
Q. But what reports and how many reports or when, you have no distinct recollection, do you?  
A. How many reports, as I said, all of the reports that I prepared which was accompanied by the check was in the folder, Mr. Hoddick. He had it in the folder. He actually had it in the folder.  
Q. With reference to those 941 forms that you examined yesterday, it was your testimony, was it not, that those that appeared to have been done on an Addressograph were mailed to the company from the District Director's office? A. Yes, sir.

Q. And where did the ones that do not appear to have been done by the Addressograph come from?

(Testimony of Katsuyoshi Watanabe.)

A. Probably one of the agents must have brought those over.

Q. Did you come down ever to the Federal Building here to the room where those forms are available and get any blanks to use?

A. Never did.

Q. Do you know whether anybody else from Home Furnishings Company ever did?

A. I don't remember, sir. [228]

Q. This notes payable account that was maintained by the corporation, you knew, did you not, that that represented, started off with a substantial sum of money that Mr. Abdul had borrowed from the corporation for the purpose of purchasing all of the corporation's stock?

A. I don't think I was told that by Mr. Abdul, sir.

Q. You don't remember being told that?

A. No.

Q. And you are certain that the balance of that notes payable account increased from '53 to the end of '54? A. Yes, sir.

Q. And it is your testimony it went up from about \$15,000 to \$25,000? A. Yes, sir.

Q. And, of course, you don't know what its status was at the end of 1955?

A. No; I don't.

Q. Would not the figures, roughly \$21,800 at the end of '53 and \$23,700 at the end of '54, inclusive, show what the facts were—

Mr. Crumpacker: Your Honor, I object to the

(Testimony of Katsuyoshi Watanabe.)

questioning of this witness on the basis of the information which apparently Mr. Hoddick has gotten out of the books. The best information certainly would come from books. And if Mr. Watanabe kept the books he should be given an opportunity [229] to refresh his memory thereby.

Mr. Hoddick: We are going into his credibility.

The Court: If that is an objection, the objection is overruled.

Q. (By Mr. Hoddick): Did you hear my last question, Mr. Watanabe? A. Yes, sir.

Q. And doesn't this sound like it was more accurate, \$21,800 at the end of '53 and \$23,700 at the end of '54 than the fifteen- and twenty-five-thousand-dollar figure which you gave?

A. I don't remember, sir.

Q. Isn't it true, Mr. Watanabe, that this is just another case of where you can't be certain that your recollection is absolutely accurate?

A. Well, I figured on the basis that it was at the time I left, it was about in the twenties. So I thought that was about 25.

Q. At the time you left?

A. So I thought it was pretty close. I mentioned that it was 25.

Q. But your recollection of what it was at the end of '53 as fifteen, you have no certainty that that is right?

A. I just thought it was that amount, sir.

Q. It is a sort of a figure you picked out of the air? [230] Is that right?

(Testimony of Katsuyoshi Watanabe.)

A. I won't exactly put it that way. I mean—

Q. How would you put it?

A. —well, I figured out that at the time I left it was about 25, sir. I took ten thousand that he was approximately, that he would be drawing out.

Q. Getting back to this subject of the funds available in the overdrawn bank accounts—

A. Yes, sir.

Q. —isn't it true, Mr. Watanabe, that for month after month after month Mr. Abdul did not cash his paychecks because there were insufficient fund to do so?

A. Yes; he had his payroll checks in the safe.

Q. And isn't it true that he also had the payroll checks to his wife held in the safe, or many of them, because there were insufficient funds to cash them? A. Some of them, yes.

Q. So the effect of the others—you said that the payroll checks were divided in two. There was one \$800 that was used to apply against the notes payable and another? A. Yes, sir.

Q. And another \$800 that he could cash or he would, that he was going to? A. Yes, sir.

Q. What happened in substance was that you had a book [231] transaction where he was issued an \$800 payroll check and the balance that he owed the company was reduced by \$800 as far as that one check is concerned?

A. Reduced by the net figure.

Q. Whatever the net figure was? A. Yes.

Q. That is less taxes? A. Yes, sir.

(Testimony of Katsuyoshi Watanabe.)

Q. And the rest? A. Yes, sir.

Q. So there was no money that came into the corporate account or went out of the corporate account by virtue of that \$800 check that was regularly applied to the net proceeds, which were regularly applied against the loan? A. Yes, sir.

Q. And as to the other \$800 check you do remember that he had quite a number of them in his safe because there were insufficient funds available?

A. Yes, sir; he did.

Q. You testified yesterday with reference to the returns that were prepared for the first and second quarters of 1955. I think they are Exhibits 9 and 10. I will hand them to you so that you can have them available. (Handing documents to the witness.) That had you prepared the returns and that you made a note on a sheet of paper that you stapled to them? [232] A. Yes, sir.

Q. You said that the check should accompany the form, and give the amount of the check, to whom payable and when due? A. Yes, sir.

Q. That is the information that you put on these? A. On the originals.

Q. On the originals? A. Yes, sir.

Q. You definitely remember putting on the original of each of those the statement that the check should accompany the form? A. Yes, sir.

Q. You have no doubt about that at the present time?

A. I believe I did put a note on it.

(Testimony of Katsuyoshi Watanabe.)

Q. And was that consistently the advice that you gave to Mr. Abdul with reference to these forms 941?

A. Well, I wasn't there to make the check out, Mr. Hoddick.

Q. No, but when you were there on the earlier returns, did you consistently advise Mr. Abdul that he should send the check along with the form?

A. Not consistently. I told him one time only, Mr. Hoddick, only once. I told him that if he didn't have the funds that at least he should mail in the reports.

Q. You told him that once but generally you told him, [233] as you stated, as you stated in writing on the note, as you stated on the note you attached to those forms that the check should go in with the form? A. Well, it was due.

Q. I am not asking whether it was due. I am asking you if that is what you told him?

A. Yes, and it needed his signature.

Q. And the check should go with the form?

A. Yes, sir.

Q. Do you recall receiving a telephone call from Mr. Abdul in 1955 during the course of which he asked you to come in and show Miss Nogami how to make these reports, these 941 forms, so they could be gotten in in time? A. Yes, I recall.

Q. And did you come in and show Miss Nogami how to do that? A. Yes, I did.

Q. And does that assist your recollection as to

(Testimony of Katsuyoshi Watanabe.)

whether you or she prepared these reports for the first two quarters of 1955?

A. Mr. Hoddick, I definitely remember I prepared the first two quarters.

Q. Both of them or just the first one?

A. Both of them.

Q. Correct me if I am in error, Mr. Watanabe, but I [234] recall your testifying yesterday that with reference to the fourth quarter of 1953 you did not prepare a duplicate as no forms were available at that time. A. Yes, sir.

Q. Now, by that you don't mean that copy was not available in the office of the Home Furniture Company, Limited, do you?

A. That is what I mean. It wasn't in our office. It was available for the District Director.

Q. But isn't it the fact that the form which was used during 1953 had become obsolete and it wasn't possible to obtain another '53 form? A. No.

Q. Isn't that so?

A. No. You see, I remember that we were supposed to have gotten four copies of the forms.

Q. And you only got three?

A. Only got three.

Q. For the year 1954? A. Right.

Q. You didn't receive one that had marked on it 1953? A. Never did.

Q. But you still had in the office of Home Furniture Company, Limited, in your retaining folder, the retaining copy of that fourth quarter? [235]

A. Yes, sir.

(Testimony of Katsuyoshi Watanabe.)

Mr. Hoddick: I have no further questions.

Redirect Examination

By Mr. Crumpacker:

Q. Mr. Watanabe, in connection with the questions asked you by Mr. Hoddick about this folder in which there were outstanding checks——

A. Checks.

Q. —also with the questions he asked you with regard to writing of checks on insufficient funds——

A. Yes, sir.

Q. —what did you mean by checks which were outstanding?

A. Well, checks that are outstanding is checks that has not been cashed by the payee or hasn't gone through the bank for payment.

Q. Do you mean when you refer to outstanding checks, do you mean they are checks that have been signed and mailed or checks which have been prepared by you, entered in your books, and placed on Mr. Abdul's desk for signature? A. Yes, sir.

Q. Well, which one do you mean?

A. Well, those checks that he had in his folder are checks that we had prepared, and when I say "we" it is because Miss Yasuda prepared some of those checks, those checks were recorded in the books which was never sent to the bank, to the [236] payee.

Q. So when you refer to the fact that there were insufficient funds, there were insufficient funds in the bank to cover all outstanding checks, you were referring to the checks—— A. All of the checks.

(Testimony of Katsuyoshi Watanabe.)

Q. ——that were not yet sent out by Mr. Abdul?

A. Yes, sir.

Q. As well as others which may have been sent out? A. Yes, sir.

Q. Now, I understood from your earlier testimony that this holdback, or from your cross-examination, that this was thought of as a holdback file, that it was obligations where checks had been prepared but since there weren't enough funds at the moment to send those out they weren't sent out, is that right? A. Not for all of the checks.

Q. Not for all of them? A. Yes, sir.

Q. Now, my question to you is, as of the end of each quarter when the 941's which you had prepared were placed upon his desk, were there sufficient funds on every occasion to pay those if he had so elected to pay them?

A. I can't actually recollect whether at the time there was actually that amount of money.

Q. Let me ask you this: Do you recall the average amount [237] of money disbursed monthly from the corporation during this period? In other words, how much money?

A. How many checks we wrote?

Q. How many checks were actually gone through? In other words, I presume that that figure would be derived from the amount of the receipts because you only paid as much as you received. With that in mind, how much, if you can say, on an average or if there is no average give it to us from beginning with '54 and extending through the mid-

(Testimony of Katsuyoshi Watanabe.)

Middle of '55, if you know, what was the average amount of money or how did it range? Did it increase or decrease from month to month during that period?

Mr. Hoddick: I am going to object to the question as having about four different parts in it and also calling at this time for a conclusion on the part of the witness without an adequate foundation being laid.

The Court: If that question were read to you, Mr. Crumpacker, I think you will have great difficulty—

Mr. Crumpacker: Well, I will rephrase it.

The Court: You will rephrase it after the first recess. Ladies and gentlemen, you are excused for a ten-minute recess.

(Jury leaves courtroom at 10:00 a.m.)

Mr. Hoddick: May it please the Court, the arrangements that Mr. Felzer had spoken to the Court about before are [238] set to go forward this afternoon, I am advised, and we would like to ask the Court's indulgence by way of adjourning the case at noon instead of at four.

The Court: Very well. You might have that last question read back to you. It will take two or three minutes.

Mr. Crumpacker: I thought it was a bad one.

The Court: The Court will stand at recess.

(A recess was taken.)

(Testimony of Katsuyoshi Watanabe.)

After Recess

The Court: Let the record show that the jury is present, the defendant and his counsel.

Q. (By Mr. Crumpacker): Mr. Watanabe, you stated that there was a folder which Mr. Abdul held on his desk of disbursements, checks held back and not paid. You testified that only certain ones were processed by him and sent out at his selection, you might say. My question to you is, can you state approximately how much money was disbursed monthly by the corporation during the years 1953 and the first half of 1954. I mean in the year 1954 and the first half of 1955.

A. I'm sorry, Mr. Crumpacker, I can't answer that.

Q. Can you give us some kind of a general statement? A. I can't.

Q. You earlier referred to the fact that a certain number of thousands of dollars each year of contracts were discounted, is that right? [239]

A. Yes, sir.

Q. Does that represent or did that represent income to the corporation?

A. Yes, because that contract after discounting meant that he had sold merchandise and had sold the contract to the finance company.

Q. And that, together with the cash receipts?

A. Yes, sir.

(Testimony of Katsuyoshi Watanabe.)

Q. For the payment of furniture represented income to the corporation?

A. Income to the corporation.

Q. Now, with those figures in mind, as you previously testified to, could you give us an estimate of the amount of monies paid out by the corporation during those years? A. No, I just can't.

Q. Do you recall how much money you said was received by the corporation in 1954 by way of discounted contracts?

A. No, not the total amount. I can't, Mr. Crum-packer.

Q. You did earlier mention it, did you not, in your direct testimony?

A. That percentage—

Q. No, you gave a figure in hundreds of thousands of dollars.

A. Hundred thousand dollars?

Q. Do you recall what that figure was for [240] 1954?

A. 1954 I believe I said about \$150,000, I believe.

Q. So you know that at least that much money was received by the corporation in 1954?

A. I believe so.

Q. Can you state what the approximate amount of other receipts by the corporation during 1954 were?

A. Other receipts was received through payments from the contract that was already discounted

(Testimony of Katsuyoshi Watanabe.)

which belonged to the finance company which we had collected for the finance company.

Q. Were there any cash receipts for sale?

A. There were some cash sales.

Q. Can you state, give an approximate amount which was received by the corporation as corporate money in addition to the discounted contracts?

A. I can't give you anything, I can't give you any figure, Mr. Crumpacker.

Q. With the \$150,000 which you mentioned in mind, how much of that was disbursed by the corporation during 1954?

A. I have no idea how much was spent.

The Court: I can't hear a word you say, Mr. Watanabe, if you are speaking.

A. (Continuing): I can't remember how much of it was spent, Mr. Crumpacker.

Q. You stated that there was never any surplus in the [241] bank account, is that right?

A. What do you mean by surplus in the bank account?

Q. Well, you stated that the bank balances were maintained more or less just above zero, shall we say, by way of disbursements, is that right?

A. Well, there were some funds, I will say, just above zero. At times there were funds, there were funds.

Q. Can you give us an estimate of how much of that \$150,000 which was received by the corporation in 1954 was paid out by the corporation in

(Testimony of Katsuyoshi Watanabe.)

1954? Was it all or 90 per cent of it or 80 per cent of it or can you give us an estimate?

Mr. Hodnick: Your Honor, I am going to object. The witness has already said twice that he doesn't know.

The Court: He has stated already, Mr. Crumpacker, that he did not know.

Q. (By Mr. Crumpacker): You stated that the account in the Bank of America was closed some time when you were there, is that right?

A. Yes, it was closed.

Q. And after that was closed, where were the contracts discounted?

A. We still discounted with the State Investment.

Q. During the whole time that you were there?

A. No. Then when they stopped taking any contracts, we took it down to the Central Pacific [242] Bank.

Q. But the contracts were discounted the whole time you were there at one place or another?

A. Yes, sir.

Q. Again referring to the manila folder in which these held-back disbursements were maintained, you say you saw the returns and checks which you had prepared in that folder? A. Yes, sir.

Q. During the time you were there?

A. Yes, sir.

Q. But did you not originally state that when they were first prepared you placed them on his desk for signature? A. Yes, sir.

(Testimony of Katsuyoshi Watanabe.)

Q. And then who put them in the folder?

A. The folder was originated by Mr. Abdul.

Q. Well, who put them in the folder?

A. He must have done that.

Q. In other words, you put them on his desk and later on you saw them in the folder?

A. Yes, sir.

Q. Presumably you say he put them. At least you didn't put them in the folder, is that right?

A. No, I didn't.

Q. Now, just how many—in order to clarify this and there is some confusion in your cross-examination—how many duplicate returns and for what quarters were made up by you? That is, you [243] know what I mean by duplicates?

A. Yes, new sets.

Q. Second sets.

A. Yes. I was given three sets.

Q. For what quarters?

A. '54 and also—

Q. Which quarters of '54?

A. The first three quarters.

Q. And which ones had been brought to your attention as delinquent at that time?

A. All of it.

Q. Of those three?

A. Yes, sir.

Q. Any others?

A. Also the '53, fourth quarter.

Q. How about the last quarter of '54?

A. Yes, sir.

Q. Well, did you prepare a duplicate for that?

(Testimony of Katsuyoshi Watanabe.)

A. I also prepared a duplicate in December, three quarters I prepared.

Q. For three quarters? A. Yes, sir.

Q. You say those are the first three quarters of '54? A. Yes, sir.

Q. My question was, with respect to the fourth quarter [244] of 1954.

A. I also prepared that.

Mr. Hoddick: I object to that—that has been asked and answered.

The Court: I'm not sure that it has. Answer the question. That is the fourth quarter for 1954, is that correct, the fourth quarter for 1954? You prepared that?

The Witness: The originals, yes.

Q. (By Mr. Crumpacker): Let me show you Exhibit No. 8 to refresh your recollection. You say you prepared that original? (Showing a document to the witness.) A. Yes, sir.

Q. Did you ever prepare a duplicate of that one?

A. I remember preparing three duplicates of one particular calendar year and the one for '53.

Q. But not the one you have in your hand?

A. I don't believe I made a duplicate for this.

The Court: I can't hear you, Mr. Watanabe. You will have to keep your voice up.

A. (Continuing): I don't believe I made a duplicate for that.

Q. When you were asked on cross-examination as to the preparation of duplicates, whether or not

(Testimony of Katsuyoshi Watanabe.)

you prepared them exactly as the originals, do you recall that question? A. Yes, sir. [245]

Q. You stated, I believe, that you did. Will you explain what you mean by exactly?

A. Well, I got my retaining copy and just copied it from the retaining copy; whatever was on the original, original retaining copy, is the figures that I arrived at from on the duplicate.

Q. And those you say you prepared in December of 1954, the duplicates?

A. December 27th, I believe.

Q. Now, when you say you prepared them exactly as the originals, does that include the date which you placed on the form?

A. I don't recall the date, sir, whether I typed the first date or the date that I had made the new report on.

Q. You say you don't recall?

A. I don't recall, sir.

Q. Do you recall whether or not you indicated they were copies?

A. I believe I typed the word "copy" on the ones that I had typed.

Q. Now, you were questioned about Mrs. Burns' visit to you—

Mr. Hoddick: Your Honor, just a minute. I call the Court's attention to the fact that Mrs. Burns has returned to the courtroom and ask that she leave. [246]

The Court: Apparently she is now departing.

(Mrs. Burns leaves courtroom.)

(Testimony of Katsuyoshi Watanabe.)

Q. (By Mr. Crumpacker): You were asked if you showed Mrs. Burns the books relative to the tax returns.

A. The retaining copy and also the check record.

Q. And then were asked if the information relative to the preparation of those returns was always accurately available from your books.

A. Yes, sir.

Q. I believe your answer was, well, you were there. A. Yes, sir.

Q. But you did state, did you not, that you didn't show the books except with the approval of Mr. Abdul? A. Yes, sir.

Q. When you say the information was always accurately available from the books, you mean to say that the books would show that the taxes had in fact been paid or the form had in fact been sent to the Internal Revenue Service?

A. My records would show that the check was drawn. Whether it was submitted at the time, I didn't have the record. At the time she was in my office, the check had not been returned, canceled by the bank. So that meant that it was still outstanding.

Q. And again when you say still outstanding, it was outstanding as far as your books were concerned? [247] A. Yes, sir.

Q. And you don't know in whose hands it was outstanding?

A. Well, at the time I couldn't release, was re-

(Testimony of Katsuyoshi Watanabe.)

luctant to release any information. But those reports were in the folder.

Q. At that time they were still in Mr. Abdul's folder? A. Yes, sir.

Q. You knew that? A. Yes, sir.

Q. And you were asked if the information in your books was always available to the people from the Internal Revenue Service? A. Yes, sir.

Q. Do you know whether or not any person from the Internal Revenue Service was given an opportunity to fully inspect your books?

A. I don't remember. While I was there no one was there to go through the books fully.

Q. Not while you were there?

A. While I was there, none.

Q. So you don't know at least from your own knowledge whether they were given an opportunity to look at the books? A. Yes, sir.

Q. And they were not given the opportunity by you? A. No. [248]

Q. You were asked if the date which you placed on the tax return was the date on which you prepared it? A. Yes, sir.

Q. Do you recall that? A. Yes, sir.

Q. And you answered, I believe, yes?

A. Yes.

Q. But you stated just now that you are not sure when you made duplicates, whether you put the original date or the date at the time in which you made the duplicate? Can you clarify those two answers?

(Testimony of Katsuyoshi Watanabe.)

A. Well, in typing the duplicates, the new receipt, I can't recall whether I typed in the exact date that I had originally, that I had originated it from, or whether I used the date that was originally typed for the particular day. I mean typed for the particular day.

Q. So you are not certain in every case and particularly in the case at least with respect to the duplicates whether you put the date of preparation on it? A. The preparation date.

Q. Or the original date?

A. Or the original date, sir.

Q. When did you say you went to work for Home Furniture? A. December.

Q. Of '52? [249] A. Yes, sir.

Q. You were questioned about the balance in the notes payable account of Mr. Abdul for the end of the years '53 and 1954. Do you have any recollection as to what it was at the end of the year 1952? A. No, I don't.

Q. With respect to that account of Mr. Abdul's maintained by the corporation, you stated that half of his salary was credited during that period to that account?

A. When you say half, you mean the \$800.

Q. Yes. A. Yes, sir.

Q. And it was indicated that this was merely a book entry by Mr. Hoddick when he questioned you? Now, my question to you is, were there not disbursements paid from that account which were

(Testimony of Katsuyoshi Watanabe.) charged against it which exceeded the amount credited to it? A. Yes, sir.

Q. During those years? A. Yes, sir.

Q. Including the balance of the salary?

A. Yes, sir.

Mr. Crumpacker: Your Honor, I would like to ask permission to reopen the direct for the limited purpose of having Mr. Watanabe identify some exhibits which I overlooked [250] on the original direct, namely, the remainder of the exhibits which are marked only for identification at this time.

The Court: I will permit it.

#### Direct Examination

By Mr. Crumpacker:

Q. I show you Plaintiff's Exhibit 15 for identification and ask if you can identify the signatures there? (Showing a document to the witness.)

A. The signature is Mr. Abdul's and the other signature is Mrs. Abdul's.

Q. That being the corporate income tax return for 1953? Now, I show you Plaintiff's 16 for identification and ask you if you can identify the signature on that, being the corporate return for 1954? (Showing a document to the witness.)

A. This belongs to Mr. Abdul.

Q. And I show you No. 17 for identification, being the corporate return for 1955, and ask you if you can identify the signature on that? (Showing a document to the witness.)

(Testimony of Katsuyoshi Watanabe.)

A. This signature belongs to Mr. Abdul.

Q. And I show you Plaintiff's No. 18 for identification, being individual tax return for the year 1953 of Daniel and Katherine Abdul, and ask you if you can identify the signatures on that? (Showing a document to the witness.)

A. The signature belongs to Mr. and Mrs. Abdul.

Q. And I show you Plaintiff's No. 19 for identification, [251] being the 1954 income tax return of Mr. and Mrs. Abdul, and ask you if you can identify the signatures on that? (Showing a document to the witness.)

A. It belongs to Mr. Abdul and Mrs. Abdul.

Q. In Plaintiff's No. 20 for identification, the income tax return for Mr. and Mrs. Abdul for 1955, can you identify the signature on that? (Showing a document to the witness.)

A. Signature belongs to Mr. Abdul and Mrs. Abdul.

Q. Now, you earlier stated that I believe you took up the matter of delinquency of these returns which you received a call on, that is, the 941 which you received a call from agents of the Internal Revenue Service? A. Yes, sir.

Q. Let me ask you, did you receive any other notification of delinquency?

A. We received delinquency notices—

Mr. Hoddick: Just one second. I am going to object to the question, your Honor, as being improper redirect examination.

(Testimony of Katsuyoshi Watanabe.)

Mr. Crumpacker: I merely want to ask him to identify one other exhibit.

Mr. Hoddick: This is still part of your reopened direct?

Mr. Crumpacker: Yes.

Mr. Hoddick: All right. [252]

A. (Continuing): —received delinquency notices for the quarterly returns.

Q. (By Mr. Crumpacker): I show you Plaintiff's Exhibit No. 13 and ask you if you can identify Plaintiff's No. 13 for identification, and ask you if you can identify that? (Showing a document to the witness.)

A. We received forms of this type here for the quarterly delinquency taxes.

The Court: For what?

The Witness: This type of forms.

Q. (By Mr. Crumpacker): Do you recall when that came in?

A. Well, it did come in when the taxes are overdue.

Q. Do you recall how long afterward?

A. Probably about 15 days, I believe.

Mr. Crumpacker: That's all I have on that, your Honor. I would like to reoffer Exhibit 13 for identification.

Mr. Hoddick: Might I ask a few questions on this?

The Court: Yes.

(Testimony of Katsuyoshi Watanabe.)

Cross-Examination

By Mr. Hoddick:

Q. You received this blank form of letter that you refer to? A. Yes, sir.

Q. Would it have writing in ink on the bottom of it?

A. I haven't seen anything—no, no ink writing at all. [253]

Q. And how many of these were received?

A. Well, I got just one from Mr. Abdul.

Q. You got one from Mr. Abdul?

A. Yes. And some of it was placed in the folder.

Q. You mean this same folder that the checks went into? A. Yes, sir.

Q. You refer to one you got from Mr. Abdul and then you say some of them or some of it was placed in the folder. What do you mean?

A. Well, we got it frequently after he probably opened the envelopes, he would stick it in the envelope.

Q. Did you get one about January 15, 1954, on or about February, 1954, covering the last quarter of '53? A. '53?

Q. I will withdraw that. The last quarter of '53 is due on January 31st?

A. January 31st, '54.

Q. And did you receive such a letter on or about February 15, '54?

(Testimony of Katsuyoshi Watanabe.)

A. I may have but I don't recall.

Q. You don't recall.

A. I don't recall.

Q. Did you receive such a letter on or about April 15, 1954? A. I don't recall. [254]

Q. Did you receive such a letter on or about July 15, 1954?

A. I believe I got one in July.

Q. You think you got one for July?

A. Yes.

Q. That is in 1954? A. Yes.

Q. And you are sure that letter was in the same form as this one? A. Yes, sir.

Q. Have you read this one through carefully?

A. Beg your pardon?

Q. Have you read this one through carefully?

A. I haven't read it carefully but I read it.

The Court: Well, read it carefully now.

(Document handed to the witness.)

The Court: Have you read it?

The Witness: Yes.

The Court: Proceed, Mr. Hoddick.

Q. (By Mr. Hoddick): Is that the type of letter which you received on or about July, 1954?

A. Yes, some time in July.

Q. And did you receive such a letter on or about October 15, 1954?

A. I am not sure if I did. I can't recall. [255]

Q. Were you shown any such letter or did you see any such letter on or about April 15, 1955?

(Testimony of Katsuyoshi Watanabe.)

A. No, sir; I don't recall.

Q. Or July 15, 1955?

A. I don't recall, sir.

Q. The only one you have a definite recollection of, then, is the one for July, 1954? A. '54.

Q. And it is your recollection that it was substantially in this form without the ink writing on the bottom? A. Right.

Q. And who was it addressed to?

A. Home Furniture Company.

Q. You said Mr. Abdul gave it to you?

A. Well, it was put in my tray, sir.

Q. You don't know who put it there?

A. I am not sure. I don't recall.

Q. And then you placed it, you gave it back to Mr. Abdul and he put it in his folder?

A. I am not sure if he did, but it was in the folder, sir.

Q. You later saw it in the folder some time?

A. Yes, sir.

Mr. Hoddick: Subject to the deletion of the ink portion on the bottom, your Honor, we have no objection to the [256] receipt of the exhibit.

The Court: That will be deleted from the exhibit and it will be received as Exhibit 13.

(The document referred to was received in evidence as Plaintiff's Exhibit No. 13.)

Mr. Crumpacker: I have no further questions.

The Court: Are there any objections? Did you offer these others?

(Testimony of Katsuyoshi Watanabe.)

Mr. Crumpacker: No, your Honor.

The Court: You did not? Very well. Do you have any recross-examination, Mr. Hoddick?

Mr. Hoddick: Yes, your Honor, I think I may be able to wind it up before the noon hour.

The Court: Before you start, I want to ask a couple of questions and you might want to enlarge on that.

Mr. Hoddick: Thank you.

The Court: Mr. Watanabe, did you ever have a conversation with Mr. Abdul with reference to showing the books of the Home Furniture Company, Limited, to agents of the Internal Revenue Service? Answer that yes or no.

The Witness: No, sir.

The Court: You never did?

The Witness: Never did.

The Court: Did you ever have any authority from him to show the books of the company to the agents of the Internal [257] Revenue Department?

The Witness: No.

Mr. Hoddick: I didn't hear the answer.

The Court: The answer was no. When you prepared the return for the last quarter of 1953, as well as a check in payment the amount shown on that return, can you state whether or not the books of the company reflected such funds in the bank so that the check would be honored if presented?

The Witness: I believe our records showed that it had insufficient funds.

The Court: Insufficient funds?

(Testimony of Katsuyoshi Watanabe.)

The Witness: Insufficient funds.

The Court: Is that the record based on the reconciliation or solely the bank account?

The Witness: The bank account.

The Court: The bank account?

The Witness: Yes.

The Court: And would that be affected by other checks that were then outstanding which you had debited against the bank account?

The Witness: Yes, sir.

The Court: And you did not know whether those checks had been presented for payment or not, the outstanding checks?

The Witness: Yes, sir.

The Court: Did you know? [258]

The Witness: If I knew that the checks were still outstanding, sir?

The Court: That's right.

The Witness: Yes, sir.

The Court: You did?

The Witness: I knew.

The Court: Well, disregarding those checks, then, would there have been sufficient funds to pay the check made payable to the Director of Internal Revenue?

The Witness: Could you tell me how much it was, the check?

The Court: May I have that?

Mr. Hoddick: Exhibit 2, I believe.

The Court: Exhibit 2.

The Witness: That is on the '53?

(Testimony of Katsuyoshi Watanabe.)

The Court: That's right.

Mr. Hawkins: Your Honor, we are not hearing the testimony.

The Court: Beg your pardon?

Mr. Hawkins: I am not hearing the testimony and I am sure some of the jurors are not getting it.

The Court: You will have to keep your voice up. Would you read the last?

(The reporter read the last question and answer.)

The Witness: I believe there was funds. [259]

The Court: There were, you think there were sufficient funds?

The Witness: Sufficient funds.

The Court: So that that check would be honored if presented?

The Witness: Yes.

The Court: May I have Exhibit 4, please? (To the clerk.) Mr. Wantanabe, with regard to Exhibit 4, the quarterly return for the first quarter of 1954, at the time you prepared that return and a check, can you state whether or not there were sufficient funds in the bank so that the check would be honored if presented for payment?

The Witness: I don't believe there were any sufficient funds on this quarter.

The Court: That is because of the outstanding checks which were recorded in your books?

The Witness: No, because I believe the payroll

(Testimony of Katsuyoshi Watanabe.)

was paid out and I don't believe we had enough to cover this amount.

The Court: You state that as your belief. You don't have the figures before you, the records, of course?

The Witness: No.

The Court: Would your answers be similar to the same type of questions relating to the returns for the balance of 1954?

The Witness: Well, in some cases it depends on the [260] receipts of the day. Certain months are good months and certain months are bad in collections.

The Court: Is it your testimony that during the year 1954, that none of these checks would be honored by the bank if they had been presented?

The Witness: At times maybe some would be able to go through. But at the time when it was to be sent in, at the particular point, I am not sure, sir.

The Court: Was it your practice to prepare checks for signature even though there were no funds in the bank to cover the payment of such checks?

The Witness: I wouldn't say it was a practice. You see, what happens is this, that I knew that the checks were being held back, certain checks. And knowing at certain times that the checks he would send in would be honored and thinking that the way he was, Mr. Abdul was sending in those checks, and with the receipts that we were receiving daily, I figured out that it would be sent in.

(Testimony of Katsuyoshi Watanabe.)

The Court: You had no responsibility whatsoever concerning the sending out or the mailing or delivery of checks that were in that holdback file?

The Witness: No, sir.

The Court: Whose responsibility was that?

The Witness: Well—

The Court: If you know. [261]

The Witness: Mr. Abdul did sign the checks he wanted to sign or pay the bills that he wanted to pay. He would make duplicate checks at times when the first one was not received. In fact, he ran the whole business, I would say.

The Court: Is it correct to say that the record of the corporation reflected that these amounts as shown in the quarterly federal tax returns were deducted from the wages of the employees of the corporation?

The Witness: Yes, it was deducted.

The Court: Now, Mr. Hoddick.

#### Recross-Examination

By Mr. Hoddick:

Q. Mr. Watanabe, would you say that these amounts deducted from the wages of the employees— A. Yes, sir.

Q. —as far as the returns are concerned which were promptly, were those on which prompt payment were not made? A. Yes, sir.

Q. What you mean to say is that the employees

(Testimony of Katsuyoshi Watanabe.)

were not paid the amount of the tax that was withheld? A. Yes, sir.

Q. You do not mean to say that the particular dollars were taken out of the pot and put over in another place to be held for payment to the United States, do you?

A. At the very beginning we held it for the—— [262]

Q. By way of depository receipts?

A. Depository receipt.

Q. I am talking about the periods when the returns were delinquent.

A. It was not held. It was not deposited.

Q. So all that happened was that the employee, say, was receiving \$300 and instead of giving him \$300 he got \$350 or whatever it was?

A. Yes, sir.

Q. You testified a moment ago that Mr. Abdul, I think you said, he ran the whole business?

A. Yes, sir.

Q. He signed the checks he wanted to sign and he paid the bills he wanted to pay?

A. Yes, sir.

Q. Isn't it a fact that Mr. Abdul paid the bills that he could pay? A lot of the bills that he wanted to pay?

A. I wouldn't say that, sir, Mr. Hoddick, because can I give you an example?

Q. Go ahead.

A. A creditor would walk in and he would ask for a certain amount of money. He would have made

(Testimony of Katsuyoshi Watanabe.)

a check, he would have made a check maybe six months ago. And he would walk in and he would tell this fellow, oh, we sent a check a long time ago. And it would show, naturally, on my check record that [263] this was transacted. Then he would come to me and say, well, it's funny you didn't receive it. So I will ask my bookkeeper to make a new one and he will make a new one.

Q. Mr. Abdul did not send out checks, as a general rule, Exhibit 6 being an exception, where he felt it would not be honored by the bank he would not send out the checks? Isn't that the long and short of it?

A. Well, there were times when he gave checks and the check was returned.

Q. There were a number of times, weren't there, when he paid and the checks bounced?

A. Sure.

Q. How frequently did that happen during the year 1954?

A. I don't recall, sir. I can't remember how often.

Q. Well, how many returned checks were there, how many returned checks would you get on an average each month during 1954?

A. I can't tell you.

Q. You have no idea? But you can tell—

A. I can tell you maybe a few of the creditors that I believe had a bounced check, if that would help.

(Testimony of Katsuyoshi Watanabe.)

Q. Can you tell us whether it happened infrequently or frequently?

A. Well, it varied actually. Sometimes it was frequent; sometimes it was infrequent. [264]

Q. Would say that these checks sent out to creditors and which were returned, were referred to the maker? A. Yes, sir.

Q. Did that happen throughout 1954?

A. It happened sometime, it happened in 1954.

Q. All during the year or was it at the end of the year or just the beginning of the year? Do you have any recollection on that score?

A. No, sir, I don't.

Q. You are sure that it occurred in 1954 and it occurred more than once? A. I believe so.

Q. In fact, quite a number of times?

A. That I don't recall whether quite a number of times.

Q. When the judge asked you about Exhibit No. 2, the return for the last quarter of '53—

A. Yes, sir.

Q. —and he and you expressed the opinion that there were sufficient funds to cover the check at that time— A. Yes, sir.

Q. —that is entirely guesswork on your part, is it not?

A. Well, the way I figured, the way I figure this, Mr. Hoddick, is that if he would have taken the deposit for that day or for a few days and deposited it in the bank and held it, he could have paid it. [265]

(Testimony of Katsuyoshi Watanabe.)

Q. And when was it that you first showed them?

A. Sometime in April.

Q. Of 1954? A. '54, sir.

Q. And that was the first time they came into the office? A. She was the first one.

Q. And those retaining copies were accurate to the best of your ability to make them so?

A. Yes, sir.

Q. So that the tax liability of Home Furniture Company on these withholding taxes was known and was available to the Internal Revenue Service Agent? A. Yes, sir.

Q. I believe you testified that the books were shown with the approval of Mr. Abdul?

A. Yes, sir.

Q. He did give his approval? [268]

A. He did.

Q. You also testified on redirect examination that some time in 1954 the contracts were discounted with the Central Pacific Bank?

A. Sometimes, yes, sir.

Q. And that for the contracts there was always some discount source available while you were working for the company?

A. Well, it depends on the bank. If they accept it, fine; if they don't, then I couldn't tell you whether or not.

Q. Isn't it your recollection that the Central Pacific Bank stopped accepting these contracts for discount some time in 1954?

(Testimony of Katsuyoshi Watanabe.)

A. I am not sure exactly what time they stopped accepting.

Mr. Hoddick: I think that's all, your Honor.

Mr. Crumpacker: Based upon the Court's questions, I would like to ask some.

The Court: Very well.

### Re-Redirect Examination

By Mr. Crumpacker:

Q. You stated at the time you showed the books to Miss Burns you had the approval of Mr. Abdul. Was any approval given by Mr. Abdul any other time to show the books to Miss Burns or any other Internal Revenue agent? [269]

A. I don't believe I was in contact with the agent at the time. What I mean to say is that the only time I showed the agent, Miss Burns, was the only one. And later Mr. Fiellin did come in. And he wanted to get certain information and wanted to look at certain items. I told him that he should see Mr. Abdul.

Q. You referred him to Mr. Abdul?

A. Yes, sir.

Q. With regard to whether there were sufficient funds on hand at any one time, at the specific times for which these returns were prepared and the checks were drawn, was it not your understanding—you previously stated, did you not, that there was an account set up to represent the taxes withheld?

A. Depository receipt.

Q. Well, and even after that was there not an

(Testimony of Katsuyoshi Watanabe.)

account in your books showing taxes withheld, accrued taxes? A. Accrued taxes, yes.

Q. Was it your understanding that those monies were held in trust for the United States?

Mr. Hoddick: Just a minute. We will object to it as a leading question.

The Court: Objection sustained.

Q. (By Mr. Crumpacker): What was your understanding with respect to those funds?

A. It should have been—— [270]

Mr. Hoddick: Just a second. I will object to that as being entirely immaterial and irrelevant and also assuming a fact not in evidence, that there was such fund that existed.

The Court: The witness has already testified that there was an account set up of taxes withheld, accrued taxes.

Mr. Hoddick: Yes, your Honor. This is a question, however, that implies the term "fund" as distinguished from this ledger account of accrued taxes.

The Court: Yes, you are correct there. The objection is sustained.

Q. (By Mr. Crumpacker): What was your understanding with respect to that account as to what that represented?

A. That represented that the Home Furniture owed the government taxes.

Q. In connection with the 1953 returns, you stated you believed there was sufficient monies at the time that was prepared and the check was drawn?

(Testimony of Katsuyoshi Watanabe.)

A. Yes, sir.

Q. But not as to the 1954 return?

A. Yes, sir.

Q. Was the reason that there was not sufficient funds because other obligations had been paid, other checks had been sent out by Mr. Abdul to pay creditors?

Mr. Hoddick: I object to the question as leading and suggestive. [271]

The Court: Sustained.

Mr. Crumpacker: Your Honor, this is based on the Court's question.

The Court: The objection is sustained. I have another question in mind that I am reluctant to examine witnesses on in a trial of this nature. But I would like to ask this question and if counsel want to ask other questions on the basis of it, they may.

Mr. Wantanabe, will you describe briefly to the jury the nature of the other obligations of the Home Furniture Company, Limited, during the period of 1954 and 1955? Do you know what I mean by that?

The Witness: Yes, sir.

The Court: Describe it, please.

The Witness: Our obligations?

The Court: Besides wages. You have already gone into that.

The Witness: The obligations were to pay his employees, his creditors, the finance company that he had collected the funds for, and the debenture bonds, dividends that was due to the debenture holders. That's about all.

(Testimony of Katsuyoshi Watanabe.)

The Court: The creditors is a very broad term. You said some time ago that the business was household furnishings and furniture?

The Witness: Yes, sir. [272]

The Court: What was the nature of the obligations, if any, with respect to the purchase of goods which were put on sale?

The Witness: It was on a—I believe it was on a 30-day account to be paid within 30 days of the purchase from wholesalers. And at times we had drafts, I believe, sight drafts from the manufacturers from the mainland.

The Court: Does that pretty well cover it?

The Witness: Yes, sir.

Q. (By Mr. Crumpacker): What time of the month did you previously state that you prepared the tax returns, approximately?

A. About, usually about the 23rd.

Q. Was it ever before that?

A. Sometimes earlier, maybe about the second week.

Q. Let me ask you this: In each instance during 1954, the first three quarters returns were prepared, as well as the last quarter of 1953, from the time you prepared the return until the day it was due, namely, the end of the month, were there in each instance sufficient receipts by the corporation with which to pay those taxes?

A. I couldn't give you a definite answer on that, Mr. Crumpacker.

Q. But you have stated in response to the

(Testimony of Katsuyoshi Watanabe.)

Court's questions that during this whole time there were other obligations [273] being paid out continually to creditors of the corporation?

A. Yes, sir, there were, of the creditors.

Q. The creditors of Mr. Abdul's selection?

A. I believe so.

Q. In other words, whichever ones he decided to pay? A. Yes, sir.

Q. And out of all those monies paid to other creditors would there have been sufficient money to pay these taxes? A. I would say, I believe so.

Q. You were asked if it was your practice to write checks for Mr. Abdul's signature when you knew there were not sufficient funds to cover them. I believe you said you did. I would like to have you clarify that. Did you not answer that it was because you knew that certain checks were held back?

A. Well, because actually, as I said, he paid certain bills or certain obligations as his wish, and that knowing that receipts for the day have already been deposited—

Q. In order to assist him in determining whether or not to send out or how many checks to send out, you earlier stated, did you not, that you prepared a how-goes-it sheet to the best of your ability showing what funds were available?

A. Daily summary.

Q. Daily summary?

A. Of course, the daily summary consists of all the checks written. [274]

Q. But it also showed other information?

(Testimony of Katsuyoshi Watanabe.)

A. Yes, sir.

Q. So that he would know how much funds were available at the time? A. Yes, sir.

Q. At least to the best of your ability to determine that? A. Yes, sir.

Q. Now, you stated, I believe, that you did not actually hold an amount in dollars aside which represented these withholdings from the wages, is that right? A. Yes, sir.

Q. However, during this whole period of 1954 and the first part of 1955, did your books not show that such monies were held aside? Did you not have an account, as you earlier testified, showing that these monies were withheld?

A. The monies were never withheld. It was withheld from the employees. That is accrued taxes.

Q. The employees were not paid the money?

A. They were not paid the gross amount. They were paid net, due after taxes.

Q. And your books reflected, did they not—

A. Yes, sir.

Q. —during this whole period that these payments have been withheld— [275]

A. Yes, sir.

Q. I am confused. I don't know whether anyone else is. Will you state once more what you meant when you said that you were overdrawn? Do you mean that you were overdrawn in your books or that you were in fact overdrawn with the bank?

A. We were overdrawn in the books and sometimes we were overdrawn in the bank, too. The

(Testimony of Katsuyoshi Watanabe.)

bank would call us and tell us that the account is overdrawn.

Q. And in that latter instance, how often was that during 1954? A. I can't recall, sir.

The Court: What?

The Witness: I can't recall.

Mr. Crumpacker: I have no further questions.

### Re-Recross-Examination

By Mr. Hoddick:

Q. Mr. Watanabe, you testified that the employees were not paid the gross amount of their wages? A. Yes, sir.

Q. It is a fact, is it not, that there were several occasions during 1954 when the pay checks issued to the employees or to some of the employees bounced?

A. I believe at times the bank would not accept our checks.

Q. In other words, there were insufficient funds in [276] fact in the bank to even cover wages at times? A. I believe so.

Q. Aside from the various obligations which you mentioned to the judge of Home Furniture Company, Limited? A. Yes, sir.

Q. There were also items such as utilities to pay?

A. Yes, sir.

Q. And advertising that had to be purchased?

A. Yes, sir.

Q. And occasionally obligations on contracts that

(Testimony of Katsuyoshi Watanabe.)

went bad that you had to sign them over with recourse?

A. Whether it was recourse, it was signed back.

Q. But it became an obligation of the Home Furniture Company?

A. It was an obligation of the Home Furniture.

Q. Unless you made good that obligation, Mr. Abdul could not continue to get the discount credit?

A. That was the agreement. I am not sure.

Q. That was something that had to be paid in order to keep the business going?

A. Actually what happened, they took it out from the new contract when it was sent over—

Q. So that listed the gross amount of the receipts that came back?

A. The net, gross and net amount. Not the gross. The [277] net amount.

Q. I am not too familiar with the terms of the merchant's field. What is a sight draft?

A. It is a draft that is payable after he sees the merchandise. That would be, he pays that after he accepts that, sees the merchandise; if he wants it, he will accept it.

Q. Well, when the merchandise arrives here from the west coast, it is held on the dock until a sight draft is paid? A. Yes, sir.

Q. And is it not also a fact that Home Furniture Company, Limited, would have to pay storage on this merchandise that was held on the dock?

A. Storage and demurrages. If and when the expiration time expires—

(Testimony of Katsuyoshi Watanabe.)

Q. So the sight draft was paid and the sooner the sight draft was paid, the lower the overhead on the receipt on this particular merchandise?

A. Yes, sir.

Q. And, of course, he had to have merchandise in order to be in the furniture business?

A. In business.

Mr. Hoddick: That's all.

Mr. Crumpacker: One question based on that, your Honor.

The Court: This will be the last question of this [278] witness?

Mr. Crumpacker: Yes.

Q. (By Mr. Crumpacker): You say or you said numerous disbursements were made to pay the sight draft to get the furniture. What you are saying, then, is that during this period when these taxes were delinquent, Mr. Abdul was buying new furniture, making purchases for the corporation of new furniture with money which could have been used to pay these taxes, is that correct?

Mr. Hoddick: I object to the question as leading and suggestive and summarizing the witness' testimony.

The Court: The objection is sustained. You are excused, Mr. Watanabe. [279]

## JAMES WALKER

a witness on behalf of the plaintiff, being duly sworn, testified as follows:

## Direct Examination

By Mr. Crumpacker:

Q. Will you state your name for the record, please? A. Jimmy Walker.

Q. And your occupation?

A. Radio announcer.

Q. Do you know the defendant in this case?

A. I do.

Q. Is he in this courtroom?

A. Yes, he is. [295]

Q. Will you identify him?

A. Mr. Abdul. (Indicating.)

Mr. Hoddick: We will stipulate that the witness has identified the defendant.

The Court: Very well.

Q. (By Mr. Crumpacker): How do you know him?

A. From business dealings when he was in the furniture business.

Q. And how long have you known him?

A. Approximately eight or nine years.

Q. Directing your attention to on or about the first day of February, 1955, did you have occasion to have a conversation with Mr. Abdul wherein the subject of federal taxes was involved?

A. Yes, I did.

(Testimony of James Walker.)

Q. Will you state where that was and what the conversation was?

The Court: And who was present.

Q. (By Mr. Crumpacker): And who was present?

Mr. Hoddick: Might I object to the question as involving several parts and have the time, place and persons present established first?

The Court: That is the better procedure, I think, Mr. Crumpacker.

Q. (By Mr. Crumpacker): Where was this conversation? [296]

A. At the offices of Home Furniture Company on South Beretania Street.

Q. And what time of day or do you recall the date or the day of the week?

A. On or about February 1st, I assume it must have been in the afternoon because evidently I would have had to come off the radio broadcast and I usually come off at one o'clock.

Q. And who was present besides the defendant and yourself, if you recall?

A. An oriental gentleman whom I assume to be one of the employees of Home Furniture. In what capacity, I don't know.

Q. Anyone else?

A. Mr. Abdul himself.

Q. And what was the nature of your visit there?

A. To try to offset an action that Mr. Abdul was contemplating where I was a co-maker on a purchase contract from Home Furniture.

(Testimony of James Walker.)

Q. And how did the question of federal taxes come up?

A. Well, I explained to Mr. Abdul at the time that I was unable to do very much on the matter because I was indebted to Uncle Sammy for some excise taxes of some ten years ago which I was paying off every month and is still being paid off. And that my first obligation was to the federal government. Specifically I said Uncle Sam, and after I get through with them then I can take care of other matters. And at that time I was [297] unable to do anything about it. So the retort that I got from Mr. Abdul at the time was—

The Court: Instead of having a retort, Mr. Walker, will you try to give the words spoken as best you can remember?

The Witness: All right, your Honor. When I mentioned this to Mr. Abdul his words, as far as I can remember, "I don't give a damn for Uncle Sammy. I come first and I will get my money before Uncle Sammy and I have ways of doing it." And the conversation carried on further as to the fact that he had to have his money and he didn't care how he was going to get it and would leave no stone unturned until that bill was collected, although I was not the purchaser but only the co-maker.

Q. (By Mr. Crumpacker): Was that the sum and substance of the conversation?

A. It was.

Mr. Crumpacker: I have no further questions.

(Testimony of James Walker.)

Mr. Hoddick: May it please the Court, I move to strike the entire testimony of the witness as being entirely immaterial and irrelevant to the issues raised in this indictment. It is irrelevant and that simply is it. It has nothing to do with what Mr. Abdul's state of mind was about his own taxes which he may or may not have owed at that time or doesn't relate to any particular taxes which he is charged with having owed and not paid in the indictment. I was going to say that this conversation that Mr. Walker has testified about apparently [298] concerned solely a debt that he owed the Home Furnishings Company and taxes which he owed Uncle Sam.

The Court: The motion is denied.

Mr. Hoddick: May I have a moment, your Honor? (Defense counsel confer.)

Mr. Hoddick: Your Honor, the defendant has a further motion to make at this time which we ask leave to make in the absence of the jury.

The Court: You may make the motion in the presence of the jury. If it is necessary to argue it, the argument will take place in the absence of the jury.

Mr. Hoddick: Your Honor, we move for a mistrial in this proceeding on the basis of the testimony just given.

The Court: Ladies and gentlemen of the jury, you will be excused until called by the Court.

(Jury leaves courtroom at 9:10 a.m.) [299]

(Testimony of James Walker.)

The Court: Let the record show the jury is present, the defendant and his counsel. The motion is denied.

Cross-Examination

By Mr. Hoddick: [311]

\* \* \*

**GEORGE D. STRATTON**

a witness on behalf of the plaintiff, being duly sworn, testified as follows:

Direct Examination

By Mr. Crumpacker:

Q. Will you state your name, please?

A. My name is George D. Stratton.

Q. Your occupation?

A. I am a collection officer assigned to duties in the Honolulu office.

Q. What office?

A. The Honolulu office.

Q. Of what?

A. Of the Internal Revenue Service.

Q. What were your duties, what was your occupation in 1955?

A. It was the same, collecting, Internal Revenue.

Q. Directing your attention to the month of April, 1955, did you have occasion in your duties to have an assignment in connection with the taxes for the Home Furniture Company?

A. I did.

(Testimony of George D. Stratton.)

Q. And will you explain, will you state when that was?

A. On April 22nd, in 1955, I was assigned four accounts to collect. Our terminology there calls them the DA's. Those are taxpayer's delinquent accounts upon the Home Furniture Company, Limited. [320]

\* \* \*

Q. Now, back to your call after the first of the year, when was that? A. January 4th.

Q. What took place? A. 1956.

Q. What took place then?

A. I called on Mr. Abdul and informed him that it was necessary that I collect these accounts, that if he did not voluntarily pay them I would be forced to take legal action to collect the accounts. I explained to Mr. Abdul what I meant by legal action, and by legal action I meant proceed to levy by distress. Mr. Abdul said, I don't want you to do that but I would like to make another part-payment offer. I told Mr. Abdul I did not have authority to make a part-payment offer but that due to his poor paying record in the past that if he desired to make a part payment record he must see my superior officer who at that time was Mr. Herbert Chock, the [332] group chief. We left it at that and I returned to the office and conversed with Mr. Chock on the case, all phases of the case up to that point. Mr. Chock was in agreement with me as to not accepting a part-time offer at that time. So we went over the necessary steps in taking legal action to collect the accounts.

(Testimony of George D. Stratton.)

Q. And what action did you take?

A. We did not take any action by virtue of the fact that in one of the local newspapers there was noticed a big notice that the Home Furniture Company was holding an auction of their stock in trade. I immediately went to the Home Furniture Company to investigate and learn more of this auction. I found the sheriff there, or one of the undersheriffs, and learned of the procedure to be held in the auction. I immediately notified the sheriff that our liens were prior to any claims of any other creditors and that if the auction was held I would distrain upon the sheriff and levy upon him for all funds collected.

The result of that was, it amounted to an agreement being reached between the creditors and our office of allowing us to take a per cent of the net proceeds of the sale. The net proceeds from the sale, I should say. And to apply it to Mr. Abdul's outstanding obligations. This per cent was 80 per cent. This seemed a satisfactory arrangement at that time for us to collect the revenue, which we did, to collect in full, if [333] I remember right, and the date was February 1st or 2nd that the sale started up, until February 12th or 13th. The funds were collected in full through that arrangement.

Q. That is, all the taxes due as of that date?

A. All the taxes due as of that date. [334]

(Testimony of George D. Stratton.)

### Cross-Examination

By Mr. Hoddick:

Q. Mr. Stratton, at the time that this agreement was arrived at, with reference to taking 80 per cent of the proceeds of the auction of the Home Furniture Company, Limited, stock in trade, was that arrangement agreed to by Mr. Abdul?

A. It was.

Q. Did he ever at any time refuse to pay these taxes to you?

A. How do you mean "refuse"? He did not pay when asked to pay.

Q. Did he ever tell you that he was not going to pay? A. No, he did not.

Q. He consistently told you that he lacked the funds, is that true, and had hoped to pay it some time in the near future?

A. Yes; that is true. [335]

\* \* \*

Q. So any payments that were received by virtue of this allocation of percentage of the proceeds of the auction came after January 30th?

A. Yes, that's right.

Q. And any payments that were received prior to January 30th would have been payments made by the taxpayer on the delinquent accounts?

A. Yes, that is true.

Mr. Hoddick: May I have a series of receipts, your Honor, marked for identification?

(Testimony of George D. Stratton.)

The Court: Are they all together?

Mr. Hoddick: Yes, your Honor, they are all in chronological order.

The Court: How many are there?

The Clerk: Fifteen, your Honor.

The Court: They will be marked as Exhibit 1, Exhibits [341] B-1 through B-15, for identification.

(The documents referred to were marked as Defendant's Exhibits B-1 through B-15 for identification.)

Q. (By Mr. Hoddick): Mr. Stratton, I hand you Defendant's Exhibits B-1 through -15 for identification and ask you to identify those, please? (Handing documents to the witness.)

A. These are form numbers 809. It is a collection officer's official receipt which he gives for taxes paid. And these receipts are all signed by myself as the collection officer in receiving these funds.

Q. And I presume that the date that appears on them is the date that the funds were received?

A. Yes, sir; that is true.

Q. Will you go through the receipts that you have there before you and tell us what payments were made on what days through January 30, 1956, as shown by the receipts?

A. Through January 30th?

Q. Yes.

A. You want me to enumerate the amounts, is that what you wish for me to do?

Q. Yes, the date.

(Testimony of George D. Stratton.)

A. On January 30th, the sum of \$547.16 was received from Home Furniture. Likewise on January 30 an amount of \$217.10 was received from the Home Furniture. And on January [342] 31st—

Q. No, through January 30th. Go back before then. A. Oh, before that?

Q. That's right.

A. On January 27th, a receipt for \$1,303.15 was received. Of that a certain amount was cash and the majority in checks. And on January 28th an amount of \$433.35 was received. And then there are two here that's prior to January 30th.

Q. And two on January 30th?

A. That's right, sir.

Q. Now, between the payments that were made prior to the auction and the payments that were made from the proceeds derived from the auction, the defendant in this case paid in full the taxes, penalty and interest assessed up to that time, is that correct?

A. Pardon me, I was thinking of something else there. Will you restate that question? I'm very sorry.

Q. I say, through the payments made prior to the auction by the defendant and the payments made from the proceeds of the auction, the defendant paid all taxes due, interest and penalties assessed up to that time, did he not?

A. That is true, yes.

Q. And that covered all taxes due, all penalties

(Testimony of George D. Stratton.)

and interest assessed for the last quarter of 1953, the first three quarters of 1954, and a penalty on the last quarter of '54, and [343] the first two quarters of 1955? A. Right.

Q. Is that correct?

A. Yes, sir; that's correct.

Q. And, as a matter of fact, Mr. Stratton, when the money had been all counted up in the till of the Internal Revenue Service, it was found that he had overpaid by about \$117 which was returned, is that correct?

A. I believe you are right on that, sir.

\* \* \*

#### Redirect Examination

By Mr. Crumpacker: [344]

\* \* \*

Q. (By Mr. Crumpacker): We will strike that question and let me ask you, these Defendant's B-1, -2, -3, -4, -5 for identification showing payments received January 27, 28, 30, 31st, in what form were those payments received?

A. These payments were received in the form of cash and checks. [345]

Q. From whom? A. From Mr. Abdul.

Q. Did they have any connection with the auction? A. They did.

Q. Can you explain why they were received before the auction or how they were received before the auction?

(Testimony of George D. Stratton.)

A. May I state that maybe I have the wrong starting date of the auction. I had a clipping put away in my file, personal file in the office, but I could not find that. But I do know that the funds here are from the result of the auction sale, that I know.

Q. Well, does your reference to those receipts refresh your memory as to the date of the beginning of the auction?

A. They do very much, sir.

Q. Well, by reference to them can you recall definitely what date it was?

A. It was either the first or second day of the auction.

Q. No; I say, what is the date of the auction? My question to you is, by reference to these receipts can you refresh your memory as to when the auction began?

A. In reference to these receipts evidently on the 26th or 27th of January instead of the 30th of January. May I elaborate a little on this?

Q. Yes; I would like to have you explain it if you can.

A. I called daily on Mr. Abdul to check the funds, the 80 per cent. He had it all counted out by checks and cash. [346] The other 20 per cent went to his other creditors, I assume. I do not know. But it went to some funds. But we were entitled 80 per cent by the agreement. Mr. Abdul had the funds either at the close of the day of the sale or the following morning, which such funds I

(Testimony of George D. Stratton.)  
picked up every day. And, as I stated awhile ago, this refreshes my memory that evidently the sale did start on the 26th or 27th, and I made erroneous testimony in saying it started the 30th. [347]

\* \* \*

Mr. Hoddick: That's correct.

The Court: Well, that objection will be overruled and they will be received in evidence as Exhibits 15, 16, 17, 18 and 19.

(The documents referred to were received in evidence as Plaintiff's Exhibits 15, 16, 17, 18 and 19.)

Mr. Crumpacker: The individual returns?

The Court: Yes, and 18 and 19. You did not offer 20.

Mr. Crumpacker: No.

Mr. Hoddick: Your Honor, may the record reflect that I believe your Honor asked me whether our only objection is one of lacking materiality, and I replied, yes. We also add to that objection the objection of irrelevancy.

The Court: Yes, the objection will be overruled.  
The Court will recess until 1:45.

(The Court recessed at 12:03 p.m.) [358]

## RAYMOND A. FIELLIN

a witness on behalf of the plaintiff, having previously been sworn, resumed and testified further as follows: [413]

\* \* \*

## Cross-Examination

By Mr. Hoddick: [427]

\* \* \*

Q. But from your examination of the records, and so on—well, eliminate the “so on”—from your examination of the records and from your conference with Mr. Abdul and Mr. Watanabe and any other person who might have been connected with the corporation, you saw nothing which would have led you to believe [436] that these returns were inaccurate, would you?

Mr. Crumpacker: I object to that as asked and answered. I will stipulate if counsel desire that the returns were accurate, your Honor.

Mr. Hoddick: That will be satisfactory.

The Court: Very well.

Mr. Hoddick: I assume that covers all of the returns, Mr. Crumpacker?

Mr. Crumpacker: Yes.

Q. (By Mr. Hoddick): By the time you had closed your investigation, Mr. Fiellin, you had ascertained, had you not, that the Plaintiff's Exhibit No. 2, which is the return for the last quarter of 1953, had been filed and had been paid in full, interest, penalty and principal?

A. I don't believe that that was paid at the time.

(Testimony of Raymond A. Fiellin.)

It was received without remittance. And during October, November, Mr. Hughes made a payment of a thousand dollars on it. But I don't think it had been paid in full. That would be shown on that form 899.

Q. You know now it has been paid in full?

A. I believe it has. But I would want to look at the 899 before I said so.

Q. Is that that certificate?

A. Yes.

(Mr. Hoddick hands a document to the witness.) [437]

A. This shows a payment on October 21st of 1955 of a thousand dollars and a liability of \$2,987.58. At the time I concluded my investigation that was the status of that return.

Q. And when does it show final payment?

A. February 3rd, 1956.

Q. And no balance due on the principal, penalty or interest?

A. It doesn't show that any balance was due.

Mr. Crumpacker: Excuse me. I don't understand that question. Is that in regard to 19—

Mr. Hoddick: Last quarter of 1953.

Q. (By Mr. Hoddick): With reference to Plaintiff's Exhibit No. 4, which is the quarterly return for the first quarter of 1954, what payments had been made thereon as of November, 1955?

Mr. Crumpacker: Your Honor, I will object to this questioning. I believe that 899 has already been explained and it speaks for itself. I don't think we should go into this.

(Testimony of Raymond A. Fiellin.)

Mr. Hoddick: Your Honor, he was investigating the lateness of filing and the lateness of payment.

The Court: The objection is overruled.

A. The March, 1954, quarter was paid on February 28, 1955.

Q. (By Mr. Hoddick): In full?

A. Yes. [438]

Q. And how about the penalty and interest on that quarter?

A. They were paid on May 19, 1955.

Q. By the way, what is the rate of interest on these matters for delinquent returns?

A. I don't know.

Q. As to the second quarter of 1954, when was that paid? A. January 30, 1956.

Q. And when were the penalties and interest on that quarter paid?

A. May 25th—well, there is an accumulation here. The return itself was paid with an NSF check. That check was returned and it goes back as another charge. Then a portion of the check was paid on January 27, 1956. And interest and a lien fee on that amount was paid on January 28, 1956. And in full then on January 30, 1956. Then the delinquency penalty and the interest on the penalty were paid as of May 25, 1955, in full, as of January 30, 1956.

Q. It had been paid in full? A. Yes.

Q. Penalty and interest and principal?

A. Let's see if it crops up again over here. (Referring to document.) Yes.

Q. As to the third quarter of 1954, when was that paid in full, penalty, interest and principal?

(Testimony of Raymond A. Fiellin.)

A. The amount of the return was paid on February 28, 1955. [439] Penalty and interest paid on May 1st, 1955.

Q. And as to the first quarter of 1955—with withdraw that—when were the penalties and interest paid on the last quarter of 1954?

A. They were paid on May 19, 1955.

Q. And that was also a return which was filed in February, 1955? A. Yes.

Q. As to the first quarter of 1955, when had full payment of principal, penalty and interest been made?

A. First quarter of 1955 was paid in full as of February 10, 1956.

Q. And the second quarter of 1955?

A. Was paid as of February 6, 1956.

Q. So that as of February, the end of February 1956, as to all of the forms 941 which are the subjects of this indictment, penalty, interest and principal had been paid?

A. 2-10-56 is the last date. [440]

\* \* \*

### DANIEL LAWRENCE ABDUL

a witness in his own behalf, being duly sworn, testified as follows:

#### Direct Examination

By Mr. Hoddick: [492]

\* \* \*

(Testimony of Daniel Lawrence Abdul.)

The Court: Well, the book will be marked as Exhibit H for identification.

(Mr. Hoddick shows book referred to to Mr. Crumpacker.)

Q. (By Mr. Hoddick): Mr. Abdul, I hand you Defendant's Exhibit H for identification and ask you if you can identify that book? (Handing book to the witness.)

A. Yes, this is the book where the records of the transactions at the store were kept in.

Q. Who kept the records in that book?

A. Several bookkeepers that we have had in the past, and the last one being Watanabe. Also the check by Leman and Hough.

Q. And that is a record of various accounts and transactions of the Home Furniture Company, Limited, is that correct? A. Yes.

Q. Are you able to find in that book any of these reconciliations that you have referred to that Mr. Watanabe would make at the end of the month?

A. Yes, I have the sheets before me now.

Q. And is there such a reconciliation for the end of each month? A. Yes, there is.

Q. What are those sheets numbered for purposes of identifying their position in Defendant's Exhibit H for identification? [506]

A. Just these particular sheets?

Q. Just the sheets covering the reconciliation.

A. They don't seem to have a number. Oh, yes, some of them.

(Testimony of Daniel Lawrence Abdul.)

Q. Well, in what portion of the book are they located?

A. They are located in the portion under the heading "journal."

Q. And they are the last sheets in that portion of the book?

A. Being the third to the last category in the book.

Q. Now, is there such a reconciliation statement there as of December 31, 1953?

A. Yes, there is.

Q. You have it in front of you?

A. Yes, I have.

Q. What does it show as the balance in the bank?

A. I'm sorry, I've got the wrong place.

Q. First of all, can you identify the handwriting in which that reference reconciliation was prepared?

A. Yes, this is made by Watanabe.

Q. And what does it show as the balance in the bank on that date?

A. It shows the balance in the bank as of that date was \$1828.68.

Q. And what does it show in terms of deposits in transit? [507]

A. \$300.90.

Q. Making a total of how much?

A. \$2,100.90.

Q. And what does it show the terms of outstanding checks? A. \$3,625.16.

Q. Is there a similar reconciliation sheet as of

(Testimony of Daniel Lawrence Abdul.)

March 31, 1954? A. There is.

Q. What does that show as the balance in the bank on that date? I will withdraw that question. In whose handwriting is that reconciliation?

A. Watanabe.

Q. What does it show as the balance in the bank? A. \$424.05.

Q. \$424.05? A. That's right.

Q. And how much in the form of deposits in transit? A. \$716.48.

Q. And that totals what? A. \$1,140.53.

Q. And what does it show in checks outstanding?

A. \$13,811.88.

Q. You have a similar reconciliation statement there as of June 30, 1954? [508]

A. Yes; I have.

Q. In whose handwriting is that statement?

A. Watanabe.

Q. And what does it show in terms of balance in the bank? A. \$261.54.

Q. How much in deposits in transit?

A. None.

Q. None? A. None.

Q. What does it show in terms of checks outstanding? A. \$8,647.95.

Q. Now, will you see if there is a reconciliation statement as of September 30, 1954?

A. Yes; I have.

Q. And in whose handwriting is it?

A. Watanabe.

(Testimony of Daniel Lawrence Abdul.)

Q. What does that show in terms of balance in the bank? A. \$57.12.

Q. How much? A. \$57.12.

Q. And how much in deposits in transit?

A. None.

Q. None? A. None. [509]

Q. How much in checks outstanding?

A. \$6,847.14.

Q. Was there a similar statement there for December 31, 1954? A. Yes.

Q. In whose handwriting is that statement?

A. Watanabe.

Q. And what does it show as the balance in the bank? A. \$2,825.34.

Q. And how much in the form of deposits in transit? A. \$251.15.

Q. How much in terms of checks outstanding?

A. \$15,665.30.

Q. What is the last month for which a reconciliation statement has been prepared or is contained in that book? A. January of 1955.

Q. And it was in February of 1955, that Mr. Watanabe stopped working on a full-time basis?

A. That's right. He continued to work from that time on a part-time basis, to do the very same work.

Q. Now, you have heard Mr. Watanabe's testimony to the effect that you maintained a manila folder in your desk? A. Yes.

Q. In which you held back checks?

A. Yes; I did. [510]

Q. And how would you determine what checks

(Testimony of Daniel Lawrence Abdul.)

to hold back and what checks to send through for payment?

A. We only paid the things that we just absolutely had to pay in order to keep the doors open.

Q. When did you first set up this holdback folder?

A. I believe it was in the latter part of 1953 when we started having our trouble with the finance company.

Q. The reconciliation statement for March of 1954 shows checks outstanding in the amount of \$13,811.88. Would all the checks which totaled that amount be contained in your holdback folder as of that date or had some of them been sent out for payment?

A. There were a good many of them that were out in transit somewhere between our office and the creditor that we had mailed it out to. Some of them were still in the folder.

Q. Are you able to tell today what proportion of that \$13,811.88 had been put through for payment and what proportion was in your folder?

A. I would not be able to tell today.

Q. Would your answer be the same for the other totals of outstanding checks of these other reconciliation sheets that you refer to?

A. Yes; my answer would be the same.

Q. Some would have been put through for payment and some were still held? [511]

A. That's right.

Q. And your reason for holding them?

(Testimony of Daniel Lawrence Abdul.)

A. We just didn't want to have checks outstanding, checks delivered to people that we owed obligations to that would not clear through the bank.

The Court: I can't hear. Would you please read that answer?

(The reporter read the last answer.)

The Court: Keep your voice up, Mr. Abdul.

Q. (By Mr. Hoddick): Did there ever occur any instances when checks which you put through for payment did bounce?

A. Yes; it happened quite frequently. As carefully as we tried to be in checking the balances at the bank and running our recaps each day to try to avoid having it happen. And it did happen. [512]

\* \* \*

Q. And on other occasions when you were in conference with either Mr. Fiellin or Mr. Stratton, the testimony that you made statements that you thought they had been mailed and if they hadn't received them you didn't know where they were?

A. Yes.

Q. Now, at the time that you made such statements to the representatives of the Internal Revenue Service concerning these particular returns, these particular tax returns about which they testified, did you in fact believe that you had mailed those returns?

A. I knew that the returns had not been mailed, that I was trying to gain time in which to raise the

(Testimony of Daniel Lawrence Abdul.)

cash to pay the taxes. At no time did I ever try not to pay it. I just didn't have the funds to [520] pay it.

Q. And what were your reasons for continuously putting them off on appointments and asking to come back later?

A. Hoping to be able to find some source, raise the funds that we needed, borrow the funds that were needed, have a sale, move a group of merchandise to get cash to be able to pay the taxes.

Q. Did you ever tell Mr. Watanabe not to show any particular corporate record or document to the representatives of the Internal Revenue Service?

A. Never.

Q. You heard testimony by Mr. Fiellin and perhaps by Mr. Stratton that when he asked you for particular documents from time to time and particular records you would go to the safe and would return and say that you couldn't find them. Did you, in fact, know where the records were?

A. Well, Mr. Watanabe was working for us on a part-time basis at that time, and working for us on a part-time basis he had many of the books and records over at his house to be able to do the posting. So many of the things were not there at the store. And I would have to arrange for him to bring it in so that we could be able to show the information to Mr. Fiellin or Mrs. Burns or Mr. Stratton or whoever came in to look for them. [521]

(Testimony of Daniel Lawrence Abdul.)

Cross-Examination  
(Continued)

By Mr. Crumpacker: [554]

\* \* \*

Q. Now, let me ask you, isn't it true that in your dealings, not only with the Bishop Bank but also with these other people that you dealt with, one of the methods that you were using to make sales was to take, for example, a four [559] hundred dollar bedroom set, and tell the customer—say a customer comes in and he says he can't make a down payment, and you say that is all right, we will just mark it up four hundred, fifty dollars and give you credit for fifty dollars down payment and then you discount the paper with the bank at the amount of four hundred dollars, which is exactly the price that your furniture was marked at in the first place. Isn't that the type of practice you were doing?

Mr. Hoddick: Your Honor, we will object to the question as being immaterial and irrelevant to any issue in this case. And it is outside the scope of the direct examination.

The Court: The objection is overruled.

A. That was not my practice.

Q. (By Mr. Crumpacker): You deny that?

A. I deny that.

Q. Let me ask you about some of your other practices. Isn't it true that you made a practice of taking a contract from somebody when you sold

(Testimony of Daniel Lawrence Abdul.)

them some furniture or something else from your store, and if it turned out later that they were unable to make the payments regularly, you would have them sign a promissory note on top of the contract for additional amount of money? Wasn't that a practice of yours also?

A. If the account had become a collection account and there were attorney's fees and collection fees, involved in [560] the collection—

Q. Were you collecting attorney's fees yourself?

A. At one time we had a collection agency handling our collections, and later we had them collected from an attorney's office and when the account became a collection account we would add onto the account the attorney's fees and collection fees and any cost of court that may be involved in the collection of the account.

Q. Well, you collected the money yourself and you added attorney's fees on it?

A. Well, we either collected it through our office or through the attorney's office and the attorney was getting the percentage of collections to take care of his work in handling the collections.

Q. Explain this promissory note proposition? How did that work?

A. If the account became delinquent and it became a collection account, it was turned over either to a collection agency at first and later directly to an attorney. We would add onto the account the attorney's fees, collection fees, any costs of court in-

(Testimony of Daniel Lawrence Abdul.)  
volved in the account, and he would sign the promissory note for that amount.

Q. And that was after the contract had already been discounted? It was out of your hands, wasn't it?

A. That was when the account had been referred back to [561] us for collection.

Q. Do you know Mrs. Sawtelle of the Better Business Bureau? A. Yes, I do.

Q. You are pretty familiar with her, aren't you?

A. I know who she is.

Q. You had lots of conversations with her?

A. I had conversations over the telephone with her.

Q. Complaints about the way you were doing business, is that right?

A. There were several complaints which we straightened out to her satisfaction.

Q. You think they were straightened out to her satisfaction? A. I believe so.

Q. Do you remember Mr. and Mrs. Nicholas Aguinoy? Let me refer you to December of 1954. Do you recall selling a tricycle and two toy autos to Mr. and Mrs. Aguinoy for \$66.75?

Mr. Hoddick: Your Honor, we object to the question as being immaterial and irrelevant to any issue in the case. It is improper and I fail to see what the method of doing business with some of his customers has to do with this case.

The Court: If that is a real ground of your objection, then it is overruled, Mr. Hoddick.

(Testimony of Daniel Lawrence Abdul.)

Q. (By Mr. Crumpacker): Do you recall that sale? [562]

A. I do not recall the particular sale, no. The name sounds familiar enough for me to believe that they did have an account with us but I can't remember the items that were purchased or when.

Q. Well, your memory was refreshed by Mrs. Sawtelle, was it not, on several occasions?

A. Well, it may have been at that time—

Q. And you recall talking to her about just what the charges were in connection with this?

A. I don't remember.

Q. With this sale?

A. I don't remember the amount.

Q. You don't remember the amount?

A. No, I do not.

Q. Do you remember that you later got him to sign a note for \$127.00?

A. I do not remember. We may have. I do not remember it.

Q. Isn't it true that at a time when Mr. and Mrs. Aguino had paid a total of \$50.00 on this \$66.75 sale and they were delinquent on several payments you told them that there was a balance, that their balance was \$123.26 and you made them sign a note and took \$3.00 from them in cash and made them sign a note for \$120.26?

A. I do not remember. If I had the ledger card in front [563] of me, I might be able to look it up and see.

Q. Do you remember giving numerous explana-

(Testimony of Daniel Lawrence Abdul.)  
tions of that to Mrs. Sawtelle, none of which seemed to satisfy her?

A. I talked to Mrs. Sawtelle, I believe, twice on the telephone. And we finally settled the account.

Q. In an amount substantially less than the amount in the promissory note, isn't that correct?

A. I do not remember.

Q. You sold watches, did you not, during this period as well as furniture?

A. At one time we did. And then we discontinued selling any jewelry items.

Q. What do you know was the excise tax item which I believe is shown in the original taxes in your file in connection with the third quarter—the fourth quarter of 1953? I believe there were shown in your books an excise tax item of some \$170.00. What, if you know, did that have to do with it?

Mr. Hoddick: Your Honor, I object to that as being immaterial and irrelevant and outside of the scope of the direct examination. It concerns a withholding tax.

The Court: Is this for the purpose of showing a state of mind, Mr. Crumpacker?

Mr. Crumpacker: Yes, your Honor, for impeachment purposes.

The Court: The objection is overruled. [564]

Q. (By Mr. Crumpacker): Do you know what those excise taxes were for?

A. The excise taxes that we reported and paid were for some jewerly items and, I believe, also

(Testimony of Daniel Lawrence Abdul.)

perhaps some luggage items; any of the items that had an excise tax due on them were reported.

Q. Isn't it true, Mr. Abdul, that during the latter part of 1953, at least, you were making a practice of writing up the sales of watches as furniture in order to avoid paying the excise tax?

A. No, it was not.

Q. It is true, is it not, that you were writing up the sales of watches as furniture?

A. No, it was not.

Q. You deny that? A. Yes, I deny that.

Q. Do you recall a certain former employee of yours quitting because of that practice?

A. No, I do not.

Q. You will acknowledge, will you not, Mr. Abdul, that you had a pretty sad experience with performance on contracts which you sold? When I say "sad experience" I mean people did not make too regular payments, isn't that correct?

A. As I stated before, we sold our contracts to the Equitable Plan Company on a non-recourse basis. We did not [565] bill them. We did not ask them to make payment. We didn't get after them. We only accepted the funds for the Equitable Plan.

Q. And that was a pretty good deal for you, I take it, because you could sell to anybody for no down payment, write it up as a down payment, and then discount the contract to Equitable Plan and wash your hands up, is that right?

A. We did not do that.

(Testimony of Daniel Lawrence Abdul.)

Q. Well, if it was a non-recourse basis, isn't that correct?

A. But we did not do that.

Q. You deny that you ever sold furniture without a down payment?

A. We sold furniture where we allowed a trade-in or we got a down payment.

Q. Well, maybe a down payment of one or two dollars, a token down payment? Did you make many sales that way? A. We got a down payment.

Q. Well, I am asking you, did you make many sales with merely a token down payment, that is, of just one or two or three or four or five dollars for a large sale? A. Not for a large sale, no.

Q. And you deny that you ever marked the price up to take care of the down payment?

A. That was not our practice. [566]

\* \* \*

Q. It is true, Mr. Abdul, that you received numerous complaints about the method of advertising that you used at Home Furniture Company?

Mr. Hoddick: I am going to object to that as immaterial and irrelevant.

The Court: The objection is overruled.

A. We didn't receive numerous complaints. We did receive [578] complaints from time to time from the Better Business Bureau. We would explain what we were doing in the ads and what we thought the ad conveyed. And it would be acceptable to the Better Business Bureau.

(Testimony of Daniel Lawrence Abdul.)

Q. It is true, is it not, that you made use of matter which came from nationally advertised goods, blocking out the nationally advertised names, and using those to advertise goods of an inferior quality?

Mr. Hoddick: We renew our objection as irrelevant and immaterial.

The Court: The objection is overruled.

A. The matters that were used to a great extent were not supplied by us. We would design an ad to sell a mattress. The newspaper would supply the picture of the mattress that was being offered and sometimes they blocked off the names so that the name could not be seen. But it only showed the picture of the item that was being offered for sale.

Q. (By Mr. Crumpacker): In other words, you are saying that this was the practice of the newspaper and not of Home Furniture?

A. We didn't have a complete mat service, no. The newspaper had a mat service.

Q. Well, let me ask you specifically, do you recall a complaint about a chrome furniture set which you advertised, a table and four chairs, and which you used the mat of Virtue [579] Brothers to advertise another chrome furniture set; do you recall that specific instance?

A. I don't recall it specifically, no. We may have done it. I don't remember.

Q. It is true, is it not, that you were making a

(Testimony of Daniel Lawrence Abdul.)

general practice of misrepresenting your goods through your newspaper ads?

A. No, we never misrepresented the goods. We gave a description of the goods and the price the goods were being offered at.

Q. But you did, did you not, use the same format that was prepared by nationally advertised goods which appeared in the paper advertising those, and merely blocked out the name and have the same picture in the newspaper for goods which you were selling for a substantially lesser price, isn't that true?

A. Well, in the case of the chrome dining room set, all the chrome dining room sets that we handled were all nationally advertised. We may not have had a picture from that particular company to show in our ad, and we used another picture to show in our ad.

Q. A picture of a set which sold for a higher price, is that right? A. No, not necessarily.

Q. Well, isn't it true that this Virtue Brothers five [580] piece set sold for \$57.50 and yours were advertised with the same advertisement without the name Virtue Brothers for \$39.50?

A. I don't remember that, no.

Q. That could have happened, though, couldn't it? A. I do not believe so, no.

Q. Would it help if I showed you the ad itself?

A. It would.

Q. I will see if I can find it during the recess.

(Testimony of Daniel Lawrence Abdul.)

Let me ask you this: Do you think that such a practice is a fair and honest practice?

A. As I stated earlier, none of the furniture stores here in town had a complete mat service. The newspapers maintained a mat service. And they would show pictures out of their mat service on items that we advertised. And it was a common practice with all furniture stores.

Q. You didn't answer my question. Do you think such a practice is an honest practice, regardless of who does it?

Mr. Hoddick: We will object to that, your Honor, as being irrelevant. The fact of the practice not having been established in this case, for one thing.

The Court: The objection is sustained.

Q. (By Mr. Crumpacker): Was it true that you received complaints with regard to such advertising not only in connection with chrome furniture but carpet sweepers, steel utility tables, rugs, studio couches, mattresses and box springs, and [581] so on?

A. I do not remember those complaints specifically, no.

Q. But you did receive complaints?

A. We did receive some complaints from the Better Business Bureau. We explained what we were doing in the ad, what we were trying to accomplish, what the ad was trying to say, and we seemed to have explained to their satisfaction.

(Testimony of Daniel Lawrence Abdul.)

Q. As a matter of fact, you say you explained it to their satisfaction, but, as a matter of fact, as a result of those conversations you discontinued the practice, isn't that correct, at least temporarily?

A. I don't remember them influencing me in discontinuing advertising, no.

Q. I mean the practice that I referred to, not advertising, I mean that type of advertising.

A. We did the same type of advertising throughout the entire period that we advertised.

Q. Well, specifically as a result of the complaints you discontinued the use of Virtue Brothers' mat for that chrome furniture set, did you not?

A. We continued to use whatever mat was available in advertising chrome sets.

The Court: Is this a convenient place to interrupt your examination?

Mr. Crumpacker: Yes. [582]

The Court: Ladies and gentlemen of the jury, you will be excused for a ten-minute recess.

(A recess was taken.)

#### After Recess

The Court: The record will show the jury is present, the defendant and his counsel.

Q. (By Mr. Crumpacker): I would like to ask you just two more brief questions about discounting and assigning for collection of new sales. It is true, is it not, Mr. Abdul, that on at least one occasion you assigned the same account for collection

(Testimony of Daniel Lawrence Abdul.)

to two different collection agencies, both of whom collected on it? A. I do not remember that.

Q. You don't remember?

A. I do not remember ever having such an account.

Q. It could have happened, though?

A. I do not believe so, no.

Q. The other question with regard to your sales, isn't it true that you sold to a good number of people on relief?

A. Not if they indicated that they were on relief. We did make some sales to people based on the application for purchase after getting the credit report, and then it was later discovered, it was later disclosed that they were on relief at the time that the purchase was made, but it was unknown to us at that time. [583]

Q. And you discovered that after you already made the sale?

A. After the sale had been made, after a few payments had been made, after they became delinquent and we started investigating the account.

Q. In other words, you did sell to people on relief without ever ascertaining initially that they were on relief, is that right?

A. We would take their credit application and get a credit bureau report. Based on the application and the credit bureau report, we would grant them credit. And then it was later discovered that we did have one in particular that I do remember, who

(Testimony of Daniel Lawrence Abdul.)

was on relief at that time, although at that time we did not know that she was on relief.

Q. Well, isn't it true that at least ultimately it came out that a substantial number, namely, something close to a hundred sales on time were made to people who were on relief?

A. I do not believe it was as high as that, no.

Q. Not as high as that? A. No. [584]

\* \* \*

Q. (By Mr. Crumpacker): You do acknowledge, nevertheless, that you knew when that return for the last quarter of 1953 was put on your desk in January, 1954, that you knew it was due by the end of January, is that right? [597]

A. That is right.

Q. And knowing that, you didn't file it?

A. Because we didn't have the money.

Q. You understand that you have an obligation besides paying the money to file a tax return? You understand that?

A. Yes. But my understanding was that the money should accompany the tax return.

Q. You heard Mr. Watanabe state on the stand that he told you at least one time that you could file a return without paying the tax?

A. I do not remember him calling it to my attention, no.

Q. But you heard him say that on the stand?

A. I believe I heard him say that, yes.

Q. You acknowledge that the returns for the

(Testimony of Daniel Lawrence Abdul.)

first three-quarters of 1954 were placed on your desk prepared in substantially the same form as exhibits 4, 5 and 7 on a timely basis in the month following the quarter? A. Yes, I remember.

Q. And you knew that each one of those was due at the end of that month in question?

A. Yes, I do.

Q. And with that knowledge you didn't file them?

A. Only because we didn't have the money on hand to pay it with the report. [598]

Q. Would it surprise you to know that during the months of January, February and March of 1954, your bank account, the Home Furniture bank account, shows that over \$70,000.00 went through it or approximately that much, at least over \$70,000.00 were deposited over that period?

A. Because I believe that figure includes the previous \$120,000.00 for the month of January which you gave me before.

Q. I think that if you will refer to your deposits you will find that the month of January was \$29,000.00. The month of February was approximately \$22,000.00. The month of March was approximately almost \$22,000.00. And the month of April a little over \$15,000.00. Out of all that money are you telling this court there was no money, that none of that belonged to Uncle Sam, the United States, for taxes?

A. As I stated, as I stated about the previous four-month period, October, November, December and January, I had the same situation here. We had

(Testimony of Daniel Lawrence Abdul.)

outstanding checks against those deposits. And if they had all been cleared, obligations that I had to pay, and if I did not pay I would have been out of business.

Q. In effect you are stating, are you not, that you are remaining in business by the use partially of the money belonging to the United States, is that right?

A. I was remaining in business to try and raise enough capital to take care of all the obligations that we had, including [599] the taxes and other obligations such as salaries, rents, utilities, and the cost of doing business and paying for the merchandise that we were selling.

Q. And you acknowledge, do you not, that part of the money you were using was money which belonged to the United States?

Mr. Hoddick: Your Honor, I am going to object to the form of the question. It may have been money due to the United States but not belonged to the United States.

The Court: The objection is overruled.

A. Because it is my belief that we didn't have this money in the first place. As I stated earlier, we had trouble even cashing the net amount of the employee's salaries.

Q. (By Mr. Crumpacker): But there was money there, isn't that true?

A. I don't believe so, no.

Q. Well, are you saying, then, that these figures of the bank's are incorrect?

(Testimony of Daniel Lawrence Abdul.)

A. Oh, we had obligations that we had committed ourselves to meet.

Q. Didn't you include among those the taxes to the United States?

A. I included among those the obligations that we had to meet in order to keep our doors open. And if we didn't meet them we would have been closed up. [600]

Q. So then you figured that if you sidestepped the United States long enough you could stay in business, is that about the size of it?

A. I was trying to raise the money to pay the taxes as well as all the other obligations that we had.

Q. In connection with the second quarter of 1954 return, I note that the months of May, June and July show deposits of something over \$52,000.00. In our account with the American Security and the Central Pacific Bank. Are you stating or will you state at this time whether or not that money was also available to you to pay taxes with?

A. We constantly were overdrawn in our bank account on checks that had been issued on commitment to permit us to keep our doors open.

Q. And all this time, you acknowledge you kept the returns for the fourth quarter of '53, the first three quarters of '54 in your so-called holdback file, is that right? A. Yes.

Q. At the same time you were spending these monies which I have recited for other obligations?

A. Well, the obligations that I stated which would enable us to keep our doors open. [601]

## SETTLING OF INSTRUCTIONS (In Chambers)

The Court: We will go through the Defendant's requested instructions first. Numbers 1 through 12 will be refused. Number 13 will be given in substance. I think I have a general instruction on that.

Mr. Crumpacker: May I make a comment on 14?

The Court: Yes.

Mr. Crumpacker: And this comment applies to a number of subsequent instructions. The words "in an attempt to evade and defeat the tax" are not matters which apply to odd counts, certainly.

Mr. Felzer: We agree to that.

Mr. Crumpacker: Also at least as to counts 10 and 12 it is also not applicable. In view of the Spies case, I think that is something that we are faced with as I previously mentioned to the court. The Supreme Court discussed the statutes, 145 a or b or whatever it was, under the old Code. And they discussed the matter of attempt. However, your Honor, you will note that the wording of the statute is in the alternative with respect to an attempt or to fail to withhold, account for and pay over. And also in the new statute those sections have been separated, which clearly to me indicates an intent of Congress to require an attempt to evade or defeat the tax because they are in two separate sections. So it cannot be said now by the court or it couldn't be said by the Supreme [696] Court, it seems to me, that an attempt is necessary in the charge of wilfully failing to account for and pay over. So at least as to

counts 8, 10 and 12 I feel that that also is inapplicable.

Mr. Hoddick: Your Honor, I would like to comment on that. It is clear from the evidence that the defendant has not succeeded in defeating or evading the payment of taxes, or if there is any offense it will have to rely on proof of his attempt to do so.

Mr. Crumpacker: Well, the offense is committed at the time the tax is due, your Honor. That is the question. I think it has been confused all through by defendant's counsel in point of having it ultimately paid. They paid under duress only. And the question is, what was the intent at the time the tax was due?

The Court: Isn't this matter covered substantially by one of your instructions?

Mr. Crumpacker: Yes, it is.

The Court: We will pass Number 14 for the time being.

Mr. Crumpacker: I think Number 15 was a motion—

The Court: Let me lead this discussion, Mr. Crumpacker, and we will make it more orderly, I believe. Number 15 as submitted will be refused. Is there any objection to Number 16? [697]

Mr. Crumpacker: I don't know whether there was any such evidence. If there was, I guess it is all right. Yes, there was some, yes.

The Court: In other words, no objection?

Mr. Crumpacker: No objection.

The Court: Number 17. Is there any objection?

Mr. Crumpacker: I had in the back of my mind,

although I didn't get a chance to check on it, the words next to the last paragraph "inconsistent with every reasonable supposition of innocence." I had in mind that wording was more or less frowned upon recently by some courts and I can't place just where. Other than that, I have no objection. The only other thing is that this, added to the others, I think I counted 15—

The Court: Mr. Crumpacker, as I said, if I can lead this discussion we will move along a lot faster. We will take them up as I call them. Number 17 will be given in substance. Number 18 likewise will be given as submitted or in substance. Any objection to 19?

Mr. Crumpacker: No objection.

The Court: Number 20?

Mr. Crumpacker: No objection.

The Court: Number 21?

Mr. Crumpacker: No objection.

The Court Number 22? [698]

Mr. Crumpacker: Only that it is covered by Defendant's 13 in a much broader sense. It is repetition. Other than that, we have no objection.

The Court: But you have no objection to the substance?

Mr. Crumpacker: No.

The Court: It will be given in substance. Number 23?

Mr. Crumpacker: No objection except that it is given also in Number 24. I think it is repetitive. They are all invitations to acquit.

The Court: Numbers 23 and 24 cover the same subject matter?

Mr. Crumpacker: Yes. And they are also covered in Plaintiff's Number 16.

Mr. Felzer: We will withdraw 24, your Honor.

The Court: Number 25 will be given in substance.

Mr. Crumpacker: May I suggest that there is a wording in there "must prove its case without any doubt," and I think there is a reasonable doubt that at least should be in there.

The Court: As I say, I will give it in substance. Likewise Number 26. I am not going to repeat a lot of this.

Mr. Felzer: I understand. But we had no way of knowing. [699]

The Court: Number 27. Is there any objection?

Mr. Crumpacker: I don't think that is correct in the first place, your Honor.

The Court: What is your authority for that instruction?

Mr. Hoddick: Your Honor, it is a general proposition of law that Section 7602 only requires that a taxpayer answer questions where he is called in under summons.

The Court: Well, then, this is not complete.

Mr. Hoddick: But there is no evidence of a summons ever having been issued in this case. That point does not arise.

The Court: There is no evidence that there has been any refusal on the part of the taxpayer to answer any questions.

Mr. Hoddick: Well, your Honor, the refusal on his part to produce books after they had the conferences with Mr. Winter and the other agents in the office, and the last time that Mr. Fiellin went back and tried to get documents.

Mr. Crumpacker: The production of books is entirely different.

Mr. Hoddick: That is covered by the same section of the statute, your Honor.

Mr. Crumpacker: Well, I refer to the regulations. But we will come to that later on. I don't think this has anything [700] to do with the production of books.

The Court: I will pass Number 27 for the time. What have you got to say on 28?

Mr. Crumpacker: Again this refers to Section 7602. It is not material in this case.

Mr. Felzer: Section 7605.

Mr. Crumpacker: No, 7605 refers to 7602, an examination which 7602 contemplates. And that is the examination by way of subpoena, and so forth, so I don't think this is material at all to this case.

Mr. Hoddick: That is not quite correct, as I recall the section, your Honor. I can summarize it. The first section authorizes the secretary or his delegate to make examinations. And if in the course of making them they need the assistance of a summons, that authority is granted to use the summons. And Section 7605 relates generally to the examination regardless of whether there is a summons or not.

The Court: Well, do those sections have any

applicability in this case where there were no summons or subpoenas?

Mr. Hoddick: Yes, your Honor, we submit that the general power and authority of employees or delegates of the secretary to examine a taxpayer's books or records or to examine the taxpayer are contained in those provisions, 7602 or 7601 through several sections there. In fact, it states in the first statute in the section, it starts off with the general [701] authority.

The Court: Again I think this all hinges on the issuance of a summons. You have no evidence of any summons. That procedure was not followed.

Mr. Hoddick: I don't have the statute—

The Court: Well, I am just examining it.

Mr. Hoddick: My recollection is that there are two different types of examinations that are contemplated. You have here general authority to examine books, papers, or records which we did here. And, secondly, to use the summons if necessary.

The Court: That is as far as we go. From there on it is all procedure following the summons, including the limitation contained in 7605(b).

Mr. Hoddick: We submit that 7605(b) does not contain any such limitation. The section as a whole refers to all of 7602.

Mr. Crumpacker: May I suggest something, your Honor?

The Court: Yes.

Mr. Crumpacker: Referring to Plaintiff's In-

struction Number 11, saving regulations 116, 120 and 128, which all provide that the records must be kept by the employer in a convenient and safe location accessible to the Internal Revenue officers, and open for inspection at all times, and I think that certainly is the interpretation of the Revenue Service under the [702] existing statutes which are applicable. I think that bolsters the court's feeling that this is not applicable to this case.

Mr. Hoddick: The regulation may so provide, your Honor, and in fact we know that they provide that records will be kept and be available at all times. But that is not within the limitation of the statute as to the number of times the agents of the Internal Revenue Service can ask to examine them during a single taxing period.

The Court: Well, I am going to pass Number 28 for the time with the feeling that I am going to refuse it. But I will allow you to be heard. Number 29.

Mr. Felzer: Number 29, we want to change the word "refusal" to "failure" on the second and fifth lines.

Mr. Crumpacker: What is that?

Mr. Felzer: The word "refusal" to the word "failure."

The Court: What do you have to say to that?

Mr. Crumpacker: I think it is clear from Section 7203 that that is a violation. I think the instruction is just all wet. As a matter of fact, I again refer to Plaintiff's Number 11.

The Court: Well, I am not concerned about the

dampness of the instruction. I am only concerned about its correctness. What is your objection?

Mr. Crumpacker: Well, it is just a misstatement of the law, your Honor. It is a violation of Section 7203, in [703] view of the regulations.

The Court: I think the instruction as offered is not a correct statement of law as applicable to this case. It will be refused. I think the same is true with Number 30. It will be refused.

Mr. Felzer: Section 7202 indicates that these acts must be wilful.

The Court: Well, there is evidence of wilfulness.

Mr. Hoddick: Your Honor, on Number 30 we submit that the language contained in the cases which discuss wilfulness in connection with tax violations, the rule of law is not established. In fact, it appears otherwise, that the relations of the taxpayer to the investigating agent of the Internal Revenue Service constitutes evidence of wilfulness or lack of wilfulness. Wilfulness lies in what was in the manner, as appears from those cases, evidence of what was in the man's mind at the time that he failed to make the return at the time. And this brings up the same subject which we objected to in a number of Plaintiff's instructions.

The Court: Well, I will pass Number 30 and we will discuss that—with which one?

Mr. Hoddick: Well, we have three or four of them.

The Court: Number 31. Any objection to that?

Mr. Crumpacker: That is the same objection as

earlier, the wilfulness or bad purpose is an incompletely instruction, [704] particularly with respect to the odd counts. And I would suggest that this is covered by Plaintiff's Number 7.

The Court: Well, I think the substance of it has to be given and will be given. Whether it will be singled out in this particular fashion, I can't say, so I will pass it for the time being. But it will be given in substance. And I think as to Number 32, the general subject matter will be covered.

Mr. Felzer: You mean that will be given in substance?

The Court: Yes. And Number 33 will be given in substance. I think I have instructed the jury throughout on that general subject matter. What do you have to say as to Number 34?

Mr. Crumpacker: No objection.

The Court: I think the subject matter is covered —this is Number 35.

Mr. Crumpacker: Yes, your Honor. Again it confuses the two different types of offenses.

The Court: Well, I will pass that for the time being. Number 36 will be refused. Here again on the definition of wilfulness. And Number 37, I will pass that for the time. And likewise 38 and 39. What do you have to say as to Number 39?

Mr. Crumpacker: I think there is something left out in the first place, somewhere in the first line or the first [705] clause. But aside from that, I am wondering if there is any evidence of this latter part which would bear on that. I can't think of any.

The Court: Including conversations had with third parties or statements made?

Mr. Crumpacker: Yes. To buttress the statements with testimony of relevant circumstances.

The Court: Well, those are the conversations had with the Internal Revenue Agents, I take it.

Mr. Hoddick: Also with his other creditors, your Honor, rearranging his financing.

Mr. Crumpacker: Well, yes, if there is any evidence of such, I have no objection to it. I just couldn't think——

The Court: Well, I think there is lots of evidence on that, and that is the basis of his defense, as I understand it.

Mr. Crumpacker: But I would suggest that there is something incomplete in the first place. It doesn't seem to make sense to me.

Mr. Felzer: This is taken verbatim from the instructions in the Foytich case.

Mr. Crumpacker: Are you sure there isn't something left out?

The Court: Well, you can check it.

Mr. Felzer: I checked it over. [706]

The Court: I will give you an opportunity to check it. You say it was from the Foytich case?

Mr. Felzer: Yes.

The Court: Number 40. You are asking the court to substitute its judgment for that of the jury and to give a judgment of acquittal on all counts.

Mr. Felzer: Well, that is the strong point in our case.

The Court: Number 40 will be refused. Number 41.

Mr. Felzer: The word on the second line should be "abrupt." And on the fourth line it should be "revenue."

The Court: Number 41 will be refused. Number 42 will be refused. Number 43 is not a correct statement of the law. It is not a correct statement of the law applicable to this case and it will be refused. What do you have to say as to Number 44, Mr. Crumpacker?

Mr. Crumpacker: No objection except the last phrase. I think this was taken from the Foytich case and rewritten a little bit. The last phrase, as I recall, in the Foytich case was "if you take into consideration all the facts and circumstances shown by the evidence, including the exhibits, and determine from such facts and circumstances what the intent was." And in here is it whether the defendant acted with criminal wilfulness. I believe as I stated that that is the way it came from the Foytich case.

Mr. Felzer: It is taken from the Foytich case, your Honor. Mr. Hoddick is checking it.

The Court: While you are checking that, I understand, Judge Hawkins, that you are going to address the jury on behalf of the defendant?

Judge Hawkins: Yes, your Honor.

The Court: I don't know how you handled this when you were sitting on the bench, but it is my preference that counsel in arguing to the jury do not state that the court will instruct you as follows, but rather to this effect, that the court will instruct

you in substance. In other words, instead of taking it verbatim, you may use verbatim if you want to—

Judge Hawkins: To this effect.

The Court: That's right. Was that your practice?

Judge Hawkins: Yes, sir.

The Court: I have asked the attorneys appearing in my court to do that. It is preferable. Now, have you found that?

Mr. Felzer: Yes, your Honor. It is a little different. It says, the question of intent is a matter for you jurors to determine. Intent is a state of mind and it is not possible to look into a man's mind to see what went on. The only way you have of arriving at the intent of the defendant in this case is for you to take into consideration all the facts and circumstances shown in the evidence, including the [708] exhibits, and determine from such facts and circumstances what the intent of the defendant was at the time in question.

Mr. Hoddick: Your Honor, on that subject we have these instructions and covered them pretty well and substituted the word "wilfulness" for "intent." That is the word that appears in the statute. "Wilfulness" is a hard enough subject to grasp the meaning of without throwing it in by way of a synonym.

The Court: What do you have to say to that, the substitution of "wilfulness" for the word "intent," Mr. Crumpacker?

Mr. Crumpacker: I think it is two different

words. I think "wilfulness" is determined through "intent." And trying to make a substitution, it is sort of taking two steps in one.

Mr. Felzer: Except for the fact, your Honor, that every one of these sections uses the word "wilful."

The Court: Well, most of the statutes say "wilful" and that goes to the question of intent, the state of mind.

Mr. Felzer: Well, we tried to use the language of the statute as much as possible. I can't see anything wrong in the language of the statute, in using that. Even in 2707(b) and (c) the word "wilful" is used in every case, in all four of these sections.

The Court: Yes. Well, it is used in 7201, which is your prime income tax evasion statute. Well, the general, the [709] subject matter of this must be given. Whether the word "intent" will be used or "wilfulness" in lieu of "intent" or whether they will be used interchangeably, I can't say at the present moment. So I will pass that. But you agree, Mr. Crumpacker, that the subject matter of it must be given?

Mr. Crumpacker: Yes. I suggest that it is in one of mine.

The Court: Number 45. I do not think 45 is a correct statement of the law applicable to the facts of this case. I will refuse to give it. The subject matter of Number 46 is necessary to the case. I will pass that for the time being. The subject matter of 47 will be given. I have a general in-

struction on that subject matter. Number 48 will be refused. Have you had time to enlarge upon Number 49?

Mr. Hoddick: Your Honor, we haven't had time. May we offer as a substitute for 49 the instruction as given in United States versus Fujimoto? I think Your Honor probably has a copy of it. And to be given in its entirety.

The Court: I think I do. I will ask my secretary for it. Number 50.

Mr. Felzer: This I am almost certain is taken from—we will withdraw Number 50.

The Court: Number 50 may be withdrawn. Number 51 will be given in substance. Number 52. If I should make such a statement, I will give in substance Number 52. And something [710] to the effect in Number 53. Number 54 will be refused. Now we have the Plaintiff's instructions. Any objection to Plaintiff's Number 1?

Mr. Felzer: Yes, your Honor. Paragraph 2 which refers and cites as its authority 2707(c) doesn't follow the language of the section insofar as that section is concerned. It leaves off the element of wilfulness entirely, and with reference to the attempt to evade or defeat any tax imposed because three of the counts specifically refer to 2707 and since they cite that as the authority it should be cited in full with reference to those three counts.

The Court: That is the only one you submitted with law involved—

Mr. Crumpacker: I have submitted ones on the gist of the offense which come later. As I see this,

it was intended at least to be the wording of the statute which involves the charge in the indictment. The only question lies in the word "wilfulness." And that is later defined.

The Court: Well, what was your specific objection in the second paragraph? It is not a complete statement of the law. That is clear. But what elements do you think are prejudicial because they are omitted?

Mr. Felzer: It is prejudicial because the sections cited refer to felonies and the essential allegation of the felonies are not included in the language. Maybe if they were [711] referring to a misdemeanor it might be adequate. But they cite both sections which are felonies. And the essential allegations of the felonies are missing, or at least not complete enough to cover 2707(c). If you separate that and use the language of 2707(c) in one and 7202 in the other—but to place them together when the elements are not the same, the jury might see fit to hold them guilty or not guilty on one of the sections and not on the other. But here you have got them both placed in one, each of which covers three separate counts.

The Court: Well, perhaps it is best that we remedy that by reading the pertinent parts of the statute.

Mr. Hoddick: As to the particular counts involved.

The Court: Well, in view of the fact that there has been a change with regard to the statutes, will you give me that information off-hand—or can you

—2, 4, 6 and 8 are under the old statute, and 10 and 12 under the new?

Mr. Felzer: 8, 10, and 12 are under the new, and 2, 4, and 6 under the old; 8, 10 and 12 are under the new one, under 7202.

The Court: That is true also of misdemeanors?

Mr. Felzer: Yes, 1, 3—

Mr. Crumpacker: There is not any change in that regard.

Mr. Felzer: Not in that regard but they are different. And because 7203 they omit the use of the words at the [712] time or times required by law or regulations.

Mr. Crumpacker: Well, it has to give information—

Mr. Felzer: Pardon me, your Honor. Those words do appear there but at different points. The only change is that they include the words "to pay such estimated tax or taxes." That seems to be the only phrase that has been added in the new code. They included the estimated tax return which, of course, is not involved here.

The Court: Well, then, you have no objection to the first paragraph?

Mr. Felzer: Not to the first and not to the last, but it is the second paragraph. That is the only one we do object to, your Honor.

Mr. Crumpacker: May I make a statement?

The Court: Yes.

Mr. Crumpacker: In 2707(c) you will note that it reads in the alternative with respect to evade and failure to account for and pay over. In the new

code those two, the part there that is in the alternative, has been placed in two separate sections. And your Honor is well aware that there may be many offenses set forth in any one statutory section. There is no charge here of evasion, although we agree that that matter comes in as far as the matter of intent, wilfulness is involved. But as you will note in the statute, it reads in the alternative. And the charge is only as to the latter half—or [713] I don't know which half.

The Court: There will be no question about it if I read the pertinent portions of 7207 and 7203.

Mr. Felzer: 7202 relates to the wilfulness.

The Court: 7202. I beg your pardon. Very well. Now, Number 2.

Mr. Felzer: There is no objection to Number 2, your Honor.

The Court: Number 3?

Mr. Hoddick: We submit as to the third one, the first sentence of the second paragraph, you don't have any place in the evidence—we have testimony as to what the procedure is that was followed and it will be for the jury to determine whether the procedure was or was not followed in particular cases, and particularly the pertinent ones, what the regulations may provide—

The Court: You have no objection to the first paragraph?

Mr. Hoddick: No; we don't.

The Court: Is this important, Mr. Crumpacker?

Mr. Crumpacker: Well, I felt that there was some attempt primarily in cross-examination to

cloud the issue of whether or not the forms were sent out or whether he had the forms or not. For that reason I thought it appropriate to put [714] it in.

The Court: Well, your first paragraph covers the subject matter on requirement of the statute. And there is room for argument on the evidence in connection with that, in connection with that second paragraph.

Mr. Crumpacker: Well, that is true, but that is the reason I wanted to put it in, because the regulation indicates—there is no excuse if the return is not produced. And I think that is a cloudy area in the evidence. And that is the purpose of putting that in there.

The Court: You do not contend that the regulations do not so provide?

Mr. Felzer: Well, I don't know about the exact language of this particular section. But I don't think the defendant here has made an issue of that particular point. So if it is irrelevant, it shouldn't be given.

Mr. Hoddick: I think Judge Hawkins is going to make the argument, but we will state now that we are not going to argue to the jury that he is excused for having filed the returns on time because he didn't get them on time from the Internal Revenue.

Mr. Felzer: I don't think it ever was that way.

Mr. Crumpacker: Well, I just had the impression that some attempt was to be made in the cross-

examination of Mr. Mew. And I thought this would help clear it up.

The Court: I don't think it is very vital either way, [715] but I will give the defendant a break by deleting the second paragraph. Number 3 is all right. Number 1 is all right.

Mr. Felzer: No objection to Number 4, your Honor. On Number 5, your Honor, we have no objection basically except as to the last clause which says, "without ground for believing that his act was lawful, or without reasonable cause, or capriciously, or with a careless disregard whether he had the right so to act." The citation there refers to a civil case rather than to a criminal case. That is Kellems versus United States. And we feel that the burden is far greater in a criminal action than in a civil case such as in the Kellems case, of course. We would rather object to the entire instruction 5 on that basis.

Mr. Hoddick: Your Honor, the other citation, United States versus McCormick, also does not contain language that we object to in this instruction.

Mr. Crumpacker: This may be an erroneous citation. I don't recognize the names of the cases but I could find them. I could find the proper case, I know. This, as a matter of fact, is a type of instruction that has been approved by the courts in all respects with regard to the failure to file. And that is the point. And to make a distinction, particularly the careless disregard, whether he has a regard as to some act, and without grounds for believing that his act was lawful——

The Court: Well, that would come in again in the [716] instruction on defining wilfulness. Stop right there. Failure to file such returns was wilful, and then if we are going to define "wilful" I don't want to repeat it several times.

Mr. Crumpacker: Well, that would be fine. That is, in other words, stop there. That failure to file was wilful as I will define it to you.

The Court: All right.

Mr. Felzer: But if the use of the words "with a bad purpose" is in the case——

The Court: Well, we will get to that in a minute. But failure to file such returns was wilful.

Mr. Felzer: That was our basic objection to the instruction, your Honor.

The Court: I will cover that. That will be covered with a definition, with a definition of the word "wilful." And, as amended, there is no objection? Number 6.

Mr. Felzer: Here again, your Honor, except for the second line, to use the word "escape" where the statutory word is "evade"—they don't denote the same degree of wilfulness. "Escape" and "evade" are different——

The Court: What do you have to say to that?

Mr. Felzer: ——since he is referring specifically to the felony counts, 2, 4, 6, 8, 10 and 12.

Mr. Crumpacker: "Evade" or "escape" is all right with me. [717]

The Court: No objection as amended? By changing the word "escape" to "evade"?

Mr. Felzer: Yes, your Honor.

Mr. Hoddick: In Number 7, your Honor, we get into the heart of what the correct definition of "wilful" is. And I have read all the cases that are cited by Plaintiff's counsel in support of the propositions and we submit that none of them give a definition such as he sets forth here, as a matter of fact. I think it was in the Forester case where they took exception to the use of the words "with careless disregard" which were given in the lower court. That would indicate that this is not a correct definition of "wilfulness."

Mr. Crumpacker: Yes, but that was an evasion case, your Honor, and that is the distinction. This is in connection with failure to file. And he points out that the standard is entirely different. As a matter of fact, in the Foytich case Judge Murphy included in the case "with careless disregard."

The Court: Well, if it was all right in the Forester case, it was the position in which it was given—

Mr. Hoddick: But, your Honor, in the Spies case and the Murdock case and even in this Paschen case, another evasion case, they go to the bad purpose and the evil motive definition of "wilfulness."

Mr. Felzer: Referring specifically to the felony charges. [718]

Mr. Crumpacker: No; I am not. This is referring to the failure to file.

Mr. Hoddick: Well, you are talking about your definition of "wilfulness" in the second paragraph in your instruction.

Mr. Crumpacker: Isn't that what you are talking about?

Mr. Hoddick: I am talking generally about the definition of "wilfulness" but restricting it to the first paragraph. I don't think that either the Murdock case or certainly not the Kellems case support your proposition that Congress meant and intended one thing by the use of the word "wilful" in one statute and another thing in the word "wilful" in a felony statute.

Mr. Crumpacker: I think that is clear in the Spies case.

The Court: Just a moment. Here is the definition. Read it carefully or listen carefully. The word "wilful" as used in Count 1, and so on, means with a bad faith and evil motive to voluntarily and purposely act with a specific intent not to do that which the law requires. And that is, to make a timely tax return.

Mr. Crumpacker: May I comment on that?

The Court: Yes.

Mr. Crumpacker: I think that is one hundred and eighty [719] degrees opposed to the correct law, because the specific intent is not required in the misdemeanor counts.

Mr. Felzer: We contend differently, your Honor. That is exactly the same intent that is required.

Mr. Crumpacker: Every case discussed, every case we have been discussing, the felony type charge is there and that is the whole gist of the Spies case. And they point out that there is a different standard.

Mr. Felzer: We believe and I think we tried to make it clear to the court in our arguments before that we feel it is exactly the same, that wilfulness is required in both the misdemeanor and the felonies, the distinction being that there are additional elements required to establish the felony such as a wilful evasion or a wilful attempt to defeat the tax. And those are the only matters which make a difference from a misdemeanor. Those are the outstanding differences. And we don't have any such evidence here. So far as the wilfulness is concerned, it is the same wilfulness that is required in both the misdemeanor and the felony. And every time we mention the word "wilfulness" we include the accompanying phrases "with bad purpose" and "evil intent," because our interpretation of the cases is that it is the same wilfulness that must be shown in each case. And it must be shown beyond all doubt obviously that before they could charge the felony there would have to be the essential elements of the felony which go beyond the [720] mere wilfulness.

Mr. Crumpacker: May I read from the Spies case, your Honor?

Mr. Felzer: The Forester case discusses the Spies case and yet reaches a different conclusion.

Mr. Crumpacker: But the case is only a felony case.

Mr. Hoddick: So was the Spies case.

Mr. Crumpacker: There was a distinction between the wilfulness involved.

The Court: Do you have the Spies case there?

Mr. Crumpacker: Yes. (Handing a book to the court.) It uses the words "passive neglect."

Mr. Felzer: They use the term "affirmative and positive acts."

Mr. Crumpacker: That's right, as distinguished from a misdemeanor.

The Court: What are your objections as to the felony counts in the third paragraph of Number 7?

Mr. Felzer: It doesn't use all of the language of the statute. It only picks portions of the statute.

Mr. Hoddick: Your Honor, another objection I think would go to the last portion of that paragraph. In the Spies case they refer to certain evidence. That is in effect what Mr. Crumpacker has done here. But, as I recall, all that evidence had to do with keeping a double set of books and that [721] sort of thing which was designed to conceal the true tax liability of the taxpayer. I don't think the last part of the second paragraph has any application to the case in hand.

The Court: Well, what is wrong with the Forester instruction leaving the word "disregarding" as to the misdemeanor counts—I said, "misdemeanor"—

Mr. Crumpacker: Well, the Forester instructions were in a felony case.

The Court: I know that. What is the objection to them as to the misdemeanor?

Mr. Crumpacker: Well, as I pointed out, the standard in a felony case as demonstrated in the Spies case is entirely different.

The Court: They say that in a sense. But passive

neglect of a statutory duty may constitute the lesser offense.

Mr. Felzer: And it says further that it must be established insofar as the felony is concerned by some affirmative or positive act specifically indicating bad purpose.

Mr. Crumpacker: Well, that is included in that instruction as written.

Mr. Felzer: Except that it is not in the right place.

The Court: Well, I will tell you what I am going to do on that. I am going to give it as offered by the Government in the second paragraph of Number 7 and then I am going to give the instruction from Forester deleting the reckless disregard [722] of the law as to the other paragraphs.

Mr. Hoddick: Your Honor, as to the Plaintiff's Instruction Number 7 as to the other paragraphs, I was talking about the third paragraph and I will withdraw that.

The Court: Very well. As to the remainder of the instructions, there are any objections?

Mr. Hoddick: As to the third paragraph, we object to the phrase "the likely defect of which would be to mislead or to conceal."

The Court: Well, as I say, I am going to give the instruction from the Forester case in lieu of it.

Mr. Hoddick: In lieu of the third paragraph?

The Court: Yes.

Mr. Hoddick: I see.

The Court: The fourth paragraph—

Mr. Hoddick: I only have a suggestion to make

there, your Honor, and that is that for simplicity and lack of confusion for the jury the word "wilfulness" be substituted for "intent" in the second line, and in the third line and in the fifth line it be changed to read "the only way that you have of arriving at whether the defendant acted wilfully in this case is for you to" and so forth. Perhaps it is a matter of form but I think this is trying to grasp two concepts that they may get confused about.

The Court: Well, I may or may not change it. Your [723] objection will be noted. Now, Number 8.

Mr. Hoddick: I think there is an awful lot of comment in that instruction, your Honor, on the evidence by way of an assumption and the fact that it does or does not establish something.

Mr. Felzer: To the degree to which the evidence is commented upon, coming from the court, it might give the jury the impression that those are the court's conclusions.

Mr. Hoddick: I think it would.

Mr. Crumpacker: That type of instruction was given in the Forester case and not commented on, as well as in the Paschen case or the Lustig case.

Mr. Felzer: What counsel has done here was to make part of his closing argument rather than an instruction of the court, and being included in the instruction it does just give the jury the impression that it is the court's conclusion rather than a discussion of the evidence by counsel in a closing argument.

Mr. Hoddick: My understanding is that in the

Lustig case the question of instructions was not involved and it was a search and seizure case primarily.

Mr. Crumpacker: Well, these were taken from the records of the Lustig case, the trial court record as well as portions of it were taken from the Foytich case, as a matter of fact. [724]

Mr. Hoddick: None of it commented on the evidence.

Mr. Crumpacker: About three or four of these were taken directly from the Foytich case, from the instructions. And the Forester case has the same type of instruction.

Mr. Felzer: If the court please, even in the last clause at the bottom of the first page it definitely reaches a conclusion and says that even if the tax evasion motive plays any part in such conduct—it states a conclusion.

Mr. Crumpacker: And if you find—I would be willing to amend that. There is no argument to that.

Mr. Hoddick: We submit, your Honor, that it constitutes too much comment on the evidence by the court to the prejudice of the defendant in outlining this evidence to adopt the instruction because you assume that his statement to others reflects his attitude towards his tax obligation. That was suppressed evidence, and that he was evasive when interviewed, that he made consistently contradictory statements, that he misrepresented the taxes which had been paid—

The Court: I will not give Instruction Number 8 at all. I have not made it a practice in the past to

comment on the evidence and may not in the future, but if I am going to comment on evidence I am going to do it by way of summarizing both sides and not concentrating on one side or the other. I want to be fair.

Mr. Crumpacker: Well, this wouldn't preclude me from [725] arguing?

The Court: It certainly will not. But I am not going to buttress the argument, let's put it that way.

Mr. Crumpacker: Well, may I ask that the instruction be given, then deleting the illustrations being given, because on something like on the question of intent you may consider all the testimony which you received?

The Court: That is covered.

Mr. Crumpacker: Well, I would like the words somewhere in the instruction "and conduct the likely effect of which would be to mislead or conceal." Now, that was stricken from the previous proposed instruction.

The Court: Where was it stricken?

Mr. Crumpacker: Paragraph 3.

The Court: From Number 7 of paragraph 3?

Mr. Crumpacker: Yes.

The Court: No; I am going to give a rather full instruction on that. I am going to take it verbatim out of the Forester case, which is rather lengthy.

Mr. Crumpacker: Well, I believe the Forester case has the same type of instruction as this. What is the court's intention? Is it the court's intention to give that part of it? I understand that in that

case a similar instruction pointed to evidence presumably which was received in that case.

The Court: No; not in this one. Well, I am not going [726] to give that portion of it, but only that portion relating to defining "wilfulness" as used in the statute. And that is on the felony counts.

Mr. Crumpacker: Could there be some words somewhere in the instructions with regard to conduct, the likely effect would be to mislead or conceal? That is what I am asking for somewhere. It has been stricken now from two instructions and that is the standard which the Spies case sets forth.

Mr. Hoddick: Yes, but with reference to the day to day books and concealment of true tax liability of the taxpayer, not with reference to what he may or may not have said or said to the representatives of the Revenue Service when they came around to see him.

The Court: That is covered with this last paragraph of Number 7, that the question of intent is a matter for you as jurors to determine and as intent is a state of mind and it is not possible to look into a man's mind to see what went on, the only way that you have of arriving at the intent of the defendant in this case is for you to take into consideration all the facts and circumstances shown by the evidence, including the exhibits, and determine from all facts and circumstances what the intent of the defendant was at the time in question. And going on. Now, Plaintiff's Number 9.

Mr. Felzer: Well, the objection I have to the first paragraph is this, your Honor: In 7207(c),

which is the original [727] felony charge, there is a greater degree or a greater number of essentials necessary to establish the felony. In 7202 they eliminate the evasion and delete the tax features of the felony and remain with the wilful failure and truthfully account for. But at the same time that language, your Honor, is exactly the same language that exists in the misdeameanors. And in some of the cases that I cited in the motion to acquit and in the motion to strike, those felony counts indicated that in such cases where the elements of the felonies are the same as the elements of the misdemeanor, that it must be the misdemeanor that is intended and not the felony. And this tends to mislead, therefore, that these are properly felony charges rather than misdemeanor charges. That would affect three counts of the indictment, your Honor.

Mr. Crumpacker: Well, I point out, your Honor, that "wilfulness," as you have already defined it, you have to assume that the jury has assumed that the definition of "wilfulness" is applied to each count.

The Court: Well, what are you trying to get at in this instruction, that each count is a separate offense?

Mr. Crumpacker: Yes. And that it is completed at the time when the taxes, when the returns are due and the taxes are due, and not to avoid or rather to avoid the confusion which I expect will come, as it has, already in argument, in argument of defense counsel, and maybe in the minds of the

jury [728] that late payment might absolve them of the crime.

The Court: Well, I couldn't say that if all of the requisite elements of the crime are present, or could I say the crime is complete at the time the returns required to be filed or the taxes required to be truthfully accounted for and paid over, could I say words to that effect? That is what you are getting at, is that correct?

Mr. Crumpacker: Well, yes. And that each is a separate offense.

The Court: And each is a separate offense?

Mr. Crumpacker: That's all.

The Court: What do you have to say to that?

Mr. Felzer: Well, that is quite different from what he originally stated. He stated that he intended to indicate that each count is a separate offense. If he says that, that is correct.

The Court: Each count contains a separate offense and if you find all of the requisite elements of the crime are present, completed at the time as to each count, the offense would be completed at the time the return was to be filed or at the time the tax was to be accounted for and paid over, in other words, at the conclusion of the end of the first month following the quarter?

Mr. Felzer: Except that in the latter part of the instruction which you gave orally it indicates conclusions or [729] might tend the jury to assume that those are conclusions.

The Court: No; if all the requisite elements are

found, then the time element—I suggest that you submit one along that line.

Mr. Crumpacker: Well, I am not quite sure wherein it is suggested it be changed.

The Court: What you are getting at, as I understand, is that the allegations contained in each count are separate offenses. And if all of the requisite elements of the crime have been proved beyond a reasonable doubt, then the crime is completed at the time when the return is required to be filed, or in the other counts at the time the tax is required to be truthfully accounted for and paid over.

Mr. Felzer: Except for the fact, your Honor, that the act must be wilful.

The Court: Yes. That is one of the requisites. Now, Number 10. Let me interrupt a minute. I think that you are right about the time. I am always optimistic. Do counsel have any objection to my directing the bailiff to excuse the jury until 2:00 o'clock?

Mr. Hoddick: No objection.

The Court: Very well. Will you excuse the jury and tell them to return at 2:00 o'clock, abiding by my instructions at all times.

The Bailiff: Very well, sir. [730]

Mr. Crumpacker: To go back to Number 9, may I suggest this as a substitute, then, for the first paragraph amending the second paragraph to read "if all the requisite elements of the crime as charged have been proved to you beyond a reasonable doubt, including the wilfulness as defined, the crime is completed at the time the return is required to be

filed and the taxes truthfully accounted for and paid over"? In substitution for the first paragraph of the standard instruction that we must find a verdict to each separate count. In other words, substituting the standard instruction for that.

Mr. Hoddick: Well, that will be in the court's general instruction anyway.

The Court: Yes.

Mr. Crumpacker: But I would like this last part to be included, "in determining the elements of intent involved in each count, you may consider all the elements of the case." Because, you see, there may be an inference there that in the instruction that because the crime is complete they might note that nothing had happened after, but it does have to do with the intent of the defendant. So the last two paragraphs as modified I would like them to be given, in connection with the court's standard instruction on separate verdicts on each count.

Mr. Hoddick: Your Honor, the last paragraph is covered by that last paragraph in Plaintiff's Instruction [731] Number 7.

Mr. Crumpacker: Well, that one is just a general instruction on intent. But my point here is that that is applicable to determining an intent with respect to each offense.

The Court: Well, I am pointing out the various counts again. I think it would be repetitious. I don't like to repeat. Now, let's get into the middle of paragraph 9 again. That is involving the requisite element of the crime, the requisite elements of

the crime have been proven beyond a reasonable doubt to your satisfaction.

Mr. Crumpacker: Yes.

The Court: I will see if I can smooth that out.  
Now, Number 10.

Mr. Hoddick: May I inquire of counsel whether he has any authority to support him?

Mr. Crumpacker: Well, this is practically a unique case. I don't think any other case is on the books on this subject. And all I can say is that this wording is copied from a manual of the Department of Justice relating to this type of offense. In other words, this is the position of the Department of Justice. And there are no reported cases on the subject.

Mr. Hoddick: We feel that the statute which is fairly accurately quoted in the first sentence is the law. But it is not evidence. And you jump from a statement of what [732] the law is to what the evidence in the case is. And I don't think the two hang together. In other words, it is the second sentence of the instruction that we take exception to.

The Court: Here again, isn't this second sentence in effect argument? It is a matter that can be argued.

Mr. Crumpacker: Well, actually I guess you would say it is similar to the matter contained in Number 8 which you have already refused.

The Court: I think so. And you have said here, as I mentioned to you, taxes withheld are required to be held in a special fund in trust for the United States. Do you have another instruction on that?

Mr. Crumpacker: Yes. That is already in. You have already passed that, your Honor. That was right at the beginning, Number 2, the last paragraph of Number 2.

The Court: Oh, yes. I don't pay as much attention to those if counsel don't object to them. (To the bailiff) : You have excused the jury?

The Bailiff: The jury has been excused pursuant to your orders.

The Court: I will refuse Number 10. Number 11.

Mr. Felzer: Here again, your Honor, in paragraph 2—we don't have any particular objection to paragraph 1 which appears to be a citation of a regulation—but the comments in paragraph 2 say that "may be considered in your [733] determination of his guilt or innocence." But it doesn't say of what. It is such a generality that it is prejudicial to the defendant in that it doesn't specify what exactly they are talking about.

Mr. Hoddick: Furthermore, your Honor, we submit that the Spies case doesn't stand for the proposition contained in the paragraph. There may have been a summons issued and he didn't respond, and it may be a violation of another section which makes it a crime not to obey the summons.

The Court: I will give paragraph 1. Now, Number 12.

Mr. Felzer: We object to 12 inasmuch as we consider it irrelevant and misleading. This statement deals with civil sanctions only. We are not concerned with civil sanctions.

Mr. Crumpacker: That is just what it says.

Mr. Felzer: But it also says that there is no burden on the part of the Government to prove its case beyond a reasonable doubt. The converse is true. Not only must they prove it beyond all reasonable doubt but beyond all doubt.

Mr. Crumpacker: You don't read it correctly.

The Court: No; that is in the civil section.

Mr. Hoddick: Isn't it confusing to the jury, your Honor, to tell them what the standards are with reference to imposing civil penalties?

Mr. Felzer: If it is confusing to me, it certainly is going to be confusing to the jury. [734]

Mr. Crumpacker: I would favor eliminating the second sentence.

The Court: Very well, delete the second sentence.

Mr. Felzer: Without the second sentence it makes a difference.

The Court: Very well. No objection? Number 13.

Mr. Hoddick: May we simply inquire as to whether the court is going to give its customary instruction?

Mr. Crumpacker: I think the court has this one in its file. I just wanted to make sure it was given.

The Court: No objection to Number 13?

Mr. Hoddick: No.

The Court: Number 14.

Mr. Felzer: That again is a general instruction, your Honor, that may be covered in what the court expects to give.

The Court: I think mine is more complete.

Mr. Hoddick: I was going to say that this is sort of one sided. This should go with something in prior statements that are consistent with this.

Mr. Crumpacker: I thought it was what the court—

The Court: I will give this in substance. I am sure it is covered by my own instruction. Number 15.

Mr. Felzer: No objection, your Honor.

The Court: Number 16. [735]

Mr. Hoddick: I think if the court gives its standard instruction—

The Court: I think this is my instruction. Any way, I will give this in substance. Have I, during the course of this trial, used any language which seems to reflect upon any counsel?

Mr. Hoddick: Not yet, your Honor.

The Court: Well, in the event that I do, I may give this instruction, Number 17. Now, Number 18.

Mr. Felzer: You are giving 17?

The Court: It isn't necessary. Number 18. Isn't that in effect covered by prior instructions that civil liberty has nothing to do with criminal liability?

Mr. Crumpacker: Number 12 covers it more generally. This has to do with investigations, assessments of penalty.

Mr. Hoddick: Well, the only difference is the inclusion of investigation. Do you think the jury is going to know whether these investigations were conducted at one stage for civil purposes and another stage for criminal purposes? It is repetitious.

Mr. Crumpacker: That has to do with the collection of taxes, penalty.

The Court: So that no inference can be drawn that the settlement of a civil case precludes the bringing of a criminal action. Is that what you have in mind? [736]

Mr. Crumpacker: Yes.

The Court: I will give this in substance. Number 19.

Mr. Hoddick: As to 19, we submit that the first part of it has no application in the face of the evidence.

Mr. Felzer: Even the second sentence reaches a conclusion of concealment of the tax liability which is contrary to the evidence offered.

The Court: Well, I will not give it because it is not pertinent, and it is covered by other instructions. Number 20.

Mr. Felzer: 20 is repetitious.

The Court: I think so. And 21 may be repetitious. I am not sure.

Mr. Hoddick: I think more appropriately, forgetting the repetitious parts for a minute, yet if you find beyond a reasonable doubt that—

The Court: I am sure that is covered by my instructions.

Mr. Crumpacker: I don't recall any instruction with respect to this presumption of innocence.

The Court: Well, I am not certain just if that is a correct statement of the law. He is presumed to be innocent and that stays with him throughout the course of the trial until the proof establishes

guilt beyond a reasonable doubt. And [737] that is guilty. There isn't any presumption. Number 22. What is your authority for Number 22?

Mr. Crumpacker: The Foytich case, copied directly from that. That is true with respect to the last four instructions which are copied directly from the Foytich case.

Mr. Felzer: It is more in the nature of comments.

The Court: Were there other instructions covering the same subject matter? I am sure this is not applicable here. Do you object to Number 22, Mr. Felzer?

Mr. Felzer: Definitely, your Honor.

The Court: On what ground?

Mr. Felzer: On the ground that it is more in the nature of comments and conclusions rather than instructions as to the law.

The Court: It will be given over your objections. Now, although we are not through, how long do you gentlemen think it is going to take to present your arguments to the jury? Your opening argument will be how long?

Mr. Crumpacker: Oh, half hour to forty-five minutes, I guess.

Judge Hawkins: About half an hour, your Honor.

The Court: What I am trying to get at is whether we can get the case to the jury today. I dislike the idea of getting the case to the jury at 4:30 or 5:00 o'clock, particularly one that has taken

this long to try because of [738] the complexity of exhibits, the evidence and the number of counts.

Mr. Felzer: I feel that Judge Hawkins is underestimating the time.

Mr. Crumpacker: Well, of course, I expect to spend probably considerable time on rebuttal argument, too, your Honor, depending, of course——

Mr. Felzer: Even with that, there will be no time for the court to give its instructions because it will be a carry-over from the time of closing argument to the time of giving instructions.

The Court: We haven't settled the instructions, yet.

Judge Hawkins: The only difficulty, your Honor, is that I am putting KHON on the block at noon-time.

The Court: Oh, well, if we start at 9:00 o'clock tomorrow morning it will be given to the jury before that. Well, I will meet with you gentlemen at 2:00 o'clock. I didn't intend to take such a long noon hour myself, but I am not having lunch with some of the visiting senators and they don't happen out here very often. So we will continue settling instructions at 2:00 o'clock. (To the bailiff): When the jury returns, will you tell them that it may be another half hour, but to stand by. I propose to go ahead this afternoon after settling the instructions and we will get the opening argument of the Government. [739]

Mr. Hoddick: What I had in mind, your Honor, was that we would object to having the court take a break at the close of the reply argument of the

defendant and then have the Government come in with its closing argument in the morning.

The Court: I will try to be fair with you on that, because I don't know whether it makes any difference or not, but having defended on numerous occasions myself, I would prefer not to have the final say-so by the Government fall in the morning. But I will keep that in mind.

(Recess at 12:00 noon.) [740]

### Afternoon Session

(Continuation of settling of instructions in chambers.)

The Court: First I apologize for being late. The senators were supposed to speak not more than five minutes. Now, let us go back to the ones we passed. First the Defendant's requested instructions. The first one is Number 14. Now, doesn't that go to the gist of the whole thing, that the Government must not only prove that the defendant did some act but that the Government has to prove all of the essential elements contained in each count of the indictment beyond a reasonable doubt, and those are the allegations contained in the indictment? And that goes as to each count. And then the question of wilfulness is covered by the general instructions to that effect.

Mr. Felzer: All we are suggesting at this point is that we omit just one clause, "in any manner to evade and defeat the tax." And let the rest of the

instruction stand as it is. And with that omission.

The Court: Well, why should the court single out any particular count or negative the proposition of proving all of the essential allegations? I think this is already covered by the instructions that I would give.

Mr. Felzer: Well, except that too many of them have the use of the word "wilfully" which we feel is the crux of the [741] act whether it is a misdemeanor or a felony. May we make this suggestion? May we suggest that we omit from an attempt, "from attempt" to the end of the word "indictment" and retain the rest of it?

The Court: What do you have to say to that, Mr. Crumpacker?

Mr. Crumpacker: I feel it is more or less a repetition. It seems to be a matter which is already covered in the court's previously settled instruction on the matter—actually in the general instruction, referring to the statute, or the instruction I think of the Plaintiff referring to the gist of the offense. It is covered by that. It is covered by that, namely, that you must prove all the elements, this and this and that, that they were done wilfully.

The Court: I am going to refuse it on the grounds that it is covered. Now we come down to Number 27. Is that the next one?

The Clerk: 27, your Honor.

The Court: 27. What is your objection to that, Mr. Crumpacker?

Mr. Crumpacker: It is a little bit misleading. And, of course, there is a law, a law which does

require it, so this is not correct either. But I think the court has a standard instruction with respect to a person not required to give incriminating statements, making incriminating statements which [742] would be more appropriate. I think that is what they are driving at. I don't know.

The Court: Well, this is not a correct statement of the law as I understand it to be.

Mr. Felzer: It is my understanding that there is in fact no code which requires one to answer to the questions of an Internal Revenue agent as such.

The Court: But there is a law which authorizes the issuance of subpoenas directing a taxpayer to give information. That is the very one you are relying on in your Number 28, a part of that law.

Mr. Hoddick: There are also some cases under that statute, your Honor, which say that a taxpayer even under subpoena does not have to produce documents or answer questions which would in any way incriminate him. At least it is no offense if he did so with that element present.

The Court: Well, the trouble is that the statute has not been invoked throughout the entire investigation.

Mr. Hoddick: It might be more to the point to modify this with an instruction that there is no law of the United States which under a circumstance, under the facts presented here, requires the taxpayer——

The Court: Well, that would mean in every criminal case the court has to negative the non-use of pertinent statutes.

Mr. Hoddick: Yes, but, of course, in this case an [743] issue has been definitely made of the defendant's non-co-operation with the agents.

The Court: That only goes to the question of his state of mind.

Mr. Hoddick: We would like the jury to know that being non-co-operative he was not in violation of any law or regulation.

The Court: I will refuse 27 and 28. Now, Number 30.

Mr. Felzer: With reference to Instruction Number 30, we would like to offer it with this revision, that failure of Mr. Abdul to furnish an agent of the Government with any books, records or any other information at any one particular time does not in and of itself constitute wilfulness.

The Court: That is the same subject matter of the lengthy instruction prepared by the Government which I refused to give because it points up these various things, including that failure.

Mr. Hoddick: Your Honor, might I advert to one point here? The Government has offered an instruction which we think correctly stated the law and which the court adopted, that if all of the necessary elements of the crime found to be as of the date when the tax return was due and the taxes payable, that the offense was complete as of that time. And we think that ties in right with this. That act of the taxpayer subsequent to the alleged completion of the crime or at the [744] time the crime would have been, which must have been found existing prior to that.

The Court: What do you have to say to that, Mr. Crumpacker?

Mr. Crumpacker: I don't think that is a correct statement of the law. All the evidence, regardless of whether it has to bear on the state of mind of the defendant, it is the events which occurred afterwards. I don't think there is any doubt about that.

The Court: I don't think there is either. Number 30 will be refused. I will refuse 31. It is covered by other instructions.

Mr. Hoddick: May I ask the court whether the instruction in the Forester case doesn't cover evil motive and that purpose?

The Court: Yes, it does. Now, Number 35. Here again I think we are duplicating.

Mr. Felzer: Well, duplication in itself isn't wrong, if the court please. And I feel that we must show some circumstance such as at least that portion which is included in the second sentence of this instruction, "If the Government's claim goes no further than to establish a state of facts from which the inference of untruthfulness or wilfulness may not be reasonably drawn, then the Government has failed to establish the charges beyond a reasonable doubt." This is something more [745] than just a question of wilfulness but also includes the burden of proof required, the amount of proof.

The Court: That will be given.

Mr. Felzer: That is specifically tied in with the element of the wilfulness, which is basic with reference to all twelve of the counts here, rather than just a general reasonable doubt instruction. In

other words, your Honor, at least the second portion of this or the second sentence of the instruction we feel should be given.

The Court: Well, I feel this way: The substance of 35 of the last sentence will be given in my overall instructions. Now, Number 37. I think that first sentence, two sentences of that are covered by other instructions. On that ground I will refuse it. Number 38, that also is covered. It will be refused.

The Clerk: Number 44 is the next.

The Court: 44. Well, that likewise is now covered on the question of wilfulness. The distinction is drawn between the various types of counts. That will be refused as covered.

The Clerk: Number 46.

The Court: And that also has now been covered. It will be refused on that ground.

Mr. Hoddick: That is the Fujimoto—

The Court: The Fujimoto instruction will have to be [746] changed. You recall that one, Mr. Hoddick?

Mr. Hoddick: I looked at it the other day when I prepared the one we submitted and deleted the portion which is not appropriate.

The Court: I think the rest of it is proper and I will give it so the jury will consider both sides and the effect that will be given to it.

Mr. Hoddick: For the record, your Honor, we will offer that instruction as given in the Fujimoto case with modification as appears, which is plural and the defendant is singular, as a substitute for our Number 49.

The Court: Yes, you withdrew that.

Mr. Felzer: Modified.

The Court: Does that take care of all of them?

Mr. Felzer: The defendant's instructions.

The Court: And the Plaintiff's?

Mr. Felzer: On Instruction 1 there was to be a revision of paragraph 2.

The Court: Yes, I will take care of that. I propose to read portions of the statute.

Mr. Hoddick: Your Honor, might I ask this: I don't know how numerous the instructions are, now that we have dwindled them down considerably. But if we could have advice from the court through the court's clerk as to the order in which these instructions would be given, it would facilitate our [747] following them at the time that they are given and would simplify the making of the necessary objections and avoid the shuffling of papers on counsel desk while you are going through them.

The Court: That is something that I hardly ever know until the last minute. And I can understand your difficulty. I will put it this way: I will try to let you know beforehand. But in any event your objections, the court's rulings, the court's rulings here in chambers, can be asserted in open court without the necessity of going through all of them. But you want to be able to check which ones I give?

Mr. Hoddick: And also in many instances you have advised that you will give them in substance, and if there is too much of a departure from substance we want to preserve the record with appropriate objections.

The Court: I will do my best to give you something beforehand, before I read them. Is there anything further in connection with instructions? We will take a five minute breather and then we will call the jury.

(The settling of instructions was completed at 2:40 p.m.) [748]

#### After Recess

(The trial resumed at 2:50 p.m. with jury present.)

The Court: The record will show that the jury is present, the defendant and his counsel. Sometimes the settling of instructions takes longer than might seem necessary to members of the jury, but it is a matter that has to be settled before argument commences. We are now ready to proceed and we will hear from Mr. Crumpacker on behalf of the Government.

(Mr. Crumpacker presented the opening argument on behalf of the plaintiff.)

The Court: Judge Hawkins, there are five minutes before the session normally adjourns. You are to make the argument now.

Judge Hawkins: Yes, your Honor.

The Court: The jury hasn't had an opportunity to hear your voice.

Judge Hawkins: Well, I will give them that pleasure tomorrow morning, your Honor.

The Court: Very well. Ladies and gentlemen of the jury, again before excusing you, as you now know, the evidence is all in and you have heard a part of the argument. And I could if I so desired keep you together as a body of twelve. [749] But I am certain that you will follow my instructions and I will not do it. Again before excusing you, you are instructed not to discuss this case with anyone, allow no one to discuss it with you, avoid reading or hearing anything about it and form no opinions about it. You will have a full opportunity for that tomorrow after you retire to the jury room to discuss it among yourselves. You are excused until nine o'clock tomorrow morning.

(Jury leaves courtroom at 3:57 p.m.)

The Court: This case will be continued until nine o'clock tomorrow morning. The court will stand adjourned until that time.

(The court adjourned.) [750]

December 5, 1956

(The trial resumed at 9:00 a.m.)

The Clerk: Criminal Number 11,072, United States of America, Plaintiff, versus Daniel L. Abdul, Defendant, for further trial.

Judge Hawkins: Ready for the defense, your Honor.

Mr. Crumpacker: Ready for the Government.

The Court: Very well, the record will show that

the jury is present, the defendant and his counsel.  
Are you ready to present your argument?

Judge Hawkins: May I proceed, your Honor?

The Court: Yes.

(Judge Hawkins presented the argument on behalf of the defendant.)

(Mr. Crumpacker presented the closing argument on behalf of the plaintiff.)

The Court: Ladies and gentlemen of the jury,  
you will be excused for a short recess.

(Jury leaves the courtroom at 10.05 a.m.)

The Court: The court will take a recess.

(A recess was taken.) [751]

### After Recess

The Court: The record will show the jury is present, the defendant and his counsel.

Ladies and gentlemen of the jury, this has been a rather lengthy trial. You have listened carefully to the evidence and to the arguments of counsel, and I am going to ask you to listen carefully to the instructions of law as I shall give them to you.

As I said before, it is your duty to follow the law as I shall state it to you. On the other hand, it is your exclusive province to determine the facts in the case and to consider and weigh the evidence for that purpose. The authority thus vested in you is not an arbitrary power but must be exercised with sincere judgment, sound discretion, and in accordance

with the laws, rules of law stated to you. The jury must accept the instructions of the court as comprising together a complete and correct statement of the law governing the case. You must not assume the existence of any law not stated in these instructions, nor speculate or guess as to what the law is. Regardless of any opinion you may now have as to what the law ought to be, it would be a violation of your sworn duty to base a verdict upon any other view of the law than that given to you in these instructions.

If during your deliberations doubt should arise in your minds concerning the law upon any given question, you [752] should so advise the court and the court will then again read the instructions covering the questions as to which you may be in doubt.

You are to decide this case simply upon the evidence that has been received by the court and the inferences that you may reasonably draw therefrom, and such assumptions as the law deduces therefrom as noted in my instructions, and in accordance with the law as I state it to you.

I told you at the very outset of this trial that the law presumes a defendant to be innocent of crime. Thus a defendant, although accused, begins a trial with a clean slate with no evidence against him, and the law permits nothing but legal evidence presented before the jury to be considered in support of the charge against the accused. So the presumption of innocence is sufficient to acquit a defendant unless the jurors are satisfied beyond a reasonable doubt

of the defendant's guilt from all of the evidence in the case.

In connection with counts one, three, five, seven, nine and eleven, you are instructed that it is unlawful for any person required to make a return as hereafter defined, to wilfully fail to make such return at the time or times required.

In connection with counts two, four and six you are instructed that the law provides as follows: Any person required under this subchapter to collect, account for and pay over any tax imposed by this subchapter who wilfully fails to [753] collect or truthfully account for and pay over such tax, and any person who wilfully attempts in any manner to evade or defeat any tax imposed by this subchapter, or the payment thereof, shall in addition to other penalties provided by law be punished.

As to counts eight, ten and twelve, you are instructed that the law provides in part as follows: Any person required under this Title to collect, account for and pay over any tax imposed by this Title who wilfully fails to collect or truthfully account for and pay over such tax shall in addition to other penalties provided by law be punished.

The term "person" includes an officer or employee of a corporation who as such officer or employee is under a duty to perform the act in respect of which the violation occurs. Certain employers paying certain employees certain wages for certain employment are required to deduct and withhold a percentage of those wages for income tax purposes and to

collect from those wages as and when paid a certain percentage for Federal Insurance Contribution Act taxes. It is conceded by the parties that Home Furniture Company, Limited, was required to deduct, withhold and collect such taxes from the wages of its employees for their employment during the period of the indictment in question. These withholdings are required to be held in a special fund in trust for the United States. A return of Federal income taxes withheld from wages and Federal [754] Insurance Contribution Act taxes is required to be filed quarterly on Form 941 on or before the last day of the first month following the close of the quarter with the Director of Internal Revenue for the district in which is located the principal place of business of the employer. The taxes are due and payable without assessment at the time fixed for filing the return, although the mechanics of withholding may be performed by an agent, the responsibility rests with the employer. The return Form 941 must be signed and verified by the employer and in case of a corporation the president, vice-president or other principal officer.

The gist of the offenses charged in counts one, three, five, seven, nine and eleven of the indictment is wilful failure on the part of the defendant to file a return. To establish this charge the Government must prove, one, that the defendant was a person required by law to make a return for the quarters in question; two, that he failed to file and return for those quarters at the time required by law; and, three, that the failure to file such returns was wilful.

And the gist of the offenses charged in counts two, four, six, eight, ten and twelve of the indictment is wilfully attempting to evade the tax. To establish these charges the Government must prove, one, that the defendant was a person required by law to collect, account for and pay over the taxes for the quarters in question; two, that he deducted and collected [755] the taxes; and, three, that he wilfully failed to truthfully account for and pay over said taxes to the District Director with intent to defeat the tax or liability.

You will note that counts one, three, five, seven, nine and eleven charge the defendant with wilfully and knowingly failing to make quarterly returns to the District Director; and counts two, four, six, eight, ten and twelve charge the defendant with wilfully failing to truthfully account for and pay over to the Director the taxes for which such returns were required to be filed. The types of wilfulness involved in these two different charges are different, and I am going to ask you to pay particular attention to the instructions which I will now read to you with regard to the definition of "wilfulness."

With respect to the even counts, I instruct you as follows, that is, as to two, four, six, eight, ten and twelve, that in every crime there must exist a union of joint operation of acts or omissions or failures to act and intent. The burden is always upon the prosecution to prove both act or failure to act and intent beyond a reasonable doubt. A person is held to intend all the natural and probable consequences of acts knowingly done or omitted.

That is to say, the law assumes a person to intend all the consequences which one standing in like circumstances and possessing like knowledge should reasonably expect to result from any act which is knowingly done or omitted. [756]

An Act is done or omitted knowingly if done or omitted voluntarily and purposely and not because of mistake or inadvertence or other innocent reason. An act is done wilfully if done voluntarily and purposely and with specific intent to do that which the law forbids. An omission to act is done wilfully if done voluntarily and purposely and with the specific intent to fail to do that which the law requires to be done. A person who knowingly does an act which the law forbids or who knowingly fails to do an act which the law requires, purposely intending to violate the law, acts with specific intent.

It is not necessary for the prosecution to prove knowledge by the accused that a particular act or failure to act is a violation of law. Everyone is held to know what the law forbids and what the law requires to be done. Intent may be proved by circumstantial evidence. It rarely can be established by any other means. While witnesses may see and hear and thus be able to give direct evidence of what a defendant does or fails to do, there can be no eye witness account of the state of mind with which the acts were done or omitted. But what a defendant does or fails to do may indicate intent or lack of intent to commit the offense charged.

In determining the issue as to the intent, the jury is entitled to consider any statements made and acts

done or omitted by the accused and all facts and circumstances and evidence which may aid determination of the state of mind. [757] Intent and motive should never be confused. Motive is that which prompts a person to act. Intent refers only to the state of mind with which the act is done. Personal advancement and financial gain are two well recognized motives for much of human conduct. These laudable motives may prompt one person to volunteer acts of good, another to volunteer acts of crime. Good motive alone is never a defense where the act done is a crime. If a person intentionally does an act which the law denounces as a crime, motive is immaterial except insofar as evidence of motive may aid determination of the issue as to intent.

Now, as to the other counts of the indictment, one, three, five, seven, eight and eleven, generally speaking, what I have just read to you is applicable with this limitation on the definition of the word "wilful" in failing to make a tax return. In that connection it means with a bad purpose or without grounds for believing that one's act is lawful or without reasonable cause or capriciously or with a careless disregard of whether one has a right so to act.

With these two standards in mind I further instruct you that the question of intent is a matter for you as jurors to determine. And as intent is a state of mind and it is not possible to look into a man's mind to see what went on, the only way that you have at arriving at the intent of the defendant in

this case is for you to take into consideration all of [758] the facts and circumstances shown by the evidence, including the exhibits, and determine from all such facts and circumstances what the intent of the defendant was at the time in question.

The wilful failure to file a return and the wilful failure to truthfully account for and pay over taxes withheld are charged as separate offenses for each quarter. And if proven to your satisfaction beyond a reasonable doubt, each is a separate and distinct offense. If all the requisite elements of the crime have been proven to your satisfaction beyond a reasonable doubt, including wilfulness as I have defined it to you, the crime is complete at the time the return is required to be filed or the tax is required to be truthfully accounted for and paid over. However, in determining the elements of intent involved in each count, you may consider all of the evidence in the case. Every employer required to withhold and pay income taxes and every employer liable for Federal Insurance Contribution Act taxes, is required to keep detailed and accurate payroll records at a convenient and safe location accessible to Internal Revenue officers, and open for inspection at all times by such officers.

I further instruct you that the penalties imposed by Congress to enforce the tax laws embrace both civil and criminal sanctions. The fact that the civil sanctions may have been assessed in this case has no bearing one way or the other on your determination of the guilt or innocence of the defendant [759] in this criminal case.

The evidence in this case consists of sworn testimony of the witnesses, all exhibits which have been received in evidence, all facts which have been admitted or stipulated, and all applicable presumptions stated in these instructions.

An inference is a deduction or conclusion which reason and common sense leave the jury to draw from facts which have been proved. A presumption is an inference which the law requires the jury to make from particular facts in the absence of convincing evidence to the contrary.

A stipulation by and between counsel for the parties as to any facts is binding upon you and those facts shall be determined by you as true in all respects, and you are to rely thereon and are bound thereby insofar as those particular facts are concerned.

I further instruct you that all evidence relating to any admission or incriminatory statements claimed to have been made by a defendant outside of court should be considered with caution and weighed with great care.

There are two types of evidence from which a jury may properly find a defendant guilty of an offense. One is direct evidence such as the testimony of an eye witness. The other is circumstantial evidence. The proof of a chain of circumstance pointing to the commission of the offense. As a general rule the law makes no distinction between direct and circumstantial [760] evidence but simply requires that before convicting a defendant the jury be satisfied of the defendant's guilt beyond a reasonable

doubt from all of the evidence in the case. In order to justify a verdict of guilt based in whole or in part upon circumstantial evidence, the facts in the chain of circumstance shown by the evidence must be consistent with the guilt of the accused and inconsistent with every reasonable supposition of innocence. If the facts and circumstances shown by the evidence are as consistent with innocence as with guilt, the jury should acquit the accused.

During the course of this trial I on occasion asked questions of a witness in order to bring out facts not then fully covered by the testimony. Do not assume that I hold any opinion on the matters to which my questions related. Remember at all times that you as jurors are at liberty to disregard all comments of the court or counsel in arriving at your own findings as to the facts.

During the course of a trial it is the duty of lawyers on each side to make objections when the other side offers evidence which counsel believes is not admissible under the rules of evidence. It is the duty of the court to decide whether under the rules of evidence testimony or other evidence may be received. Whenever the court has sustained an objection to a question, you are to disregard that question and may draw no inference from the wording of it or speculate as to what the [761] witness would have said if permitted to answer. Nor may you assume any party has objected to a question because that side expected the answer if given to be unfavorable.

During the trial of this case the court has per-

mitted certain evidence to be introduced over the objection of counsel. In so ruling the court has not determined or indicated any opinion as to the weight or effect of such evidence.

In judging the credibility of witnesses and the weight and effect of evidence, you are not to consider the rulings or comments of the court in admitting or rejecting evidence.

I further instruct you that all evidence of a witness whose self-interest or attitude is shown to be such as might tend to prompt testimony unfavorable to the accused should be considered with caution and weighed with great care. And when from a given transaction or a series of transactions different reasonable inferences may be drawn, some favorable and some unfavorable to the accused person, it is the duty of the jury to adopt the inference favorable to the accused.

The defendant here is to be tried only on the evidence which is before the jury and not upon suspicions that may have been elicited by questions of counsel, or answers which were not permitted.

I further instruct you that whenever a defendant seeks to prove affirmatively any fact in his favor, it is only necessary for such defendant to prove facts which raise a reasonable [762] doubt in your minds, expecting the ultimate facts sought to be proved. If the defendant creates in your mind a reasonable doubt respecting any fact which he attempts to prove, it is your duty to find that fact in such defendant's favor.

You will note that the burden of proof with re-

spect to the prosecution and the degree to which the prosecution must prove a fact is essentially different from that required of the defendant.

You are instructed that if from the evidence you find that the defendant did not file tax returns at the time or times required by law or that he did not pay the tax required by law, such failures in themselves do not constitute wilfulness under the law. Unless you find that the filing and paying late of such taxes were acts with a bad purpose or an evil motive. If the Government proof goes no further than to establish a state of facts for which the inference of untruthfulness or wilfulness may not be reasonably drawn, then the Government has failed to establish the charges beyond a reasonable doubt. And under such circumstance it would be the duty of the jury to acquit the defendant.

You are further instructed that when the belief of a person charged with wilful failure to pay and file returns on time with an intent to evade or defeat the tax, the motive of his act is material and he may not only directly testify that he had no intent to evade or defeat any tax imposed but he may [763] buttress the statement with testimony of relevant circumstances, including conversations had with third parties or statements made by them tending to support his statement that he had no intent to evade or defeat any tax imposed.

You are instructed that the general rule is that the testimony of a witness cannot be wholly disregarded unless it is impeached or contradicted by other testimony or by some presumption or by an

inference deducible from the facts proved, or unless it is inherently improbable.

These may sound repetitious but I will give them anyway. If I, as the judge of this court, have at any time during this trial used any language which or seemed to you to indicate the opinion of the judge as to any question of fact or as to the credibility of any witness, you must not be influenced thereby, but you must determine yourselves all questions of fact without regard to the opinion of anyone else.

And if in stating to you any proposition of law I have assumed any fact as proven, you are to disregard such an assumption and deduce your own conclusions from the evidence.

I want you to distinctly understand that in this charge the court is in no manner or form expressing or desires to express any opinion upon the weight of the evidence or any part thereof, nor does the court express any opinion as to the truth or falsity of the testimony of any witness, nor does the court in any manner or form express its opinion that any alleged [764] fact in this case is or is not proven. With questions of fact, the weight of the evidence, the credit which you should give to any witness sworn in the case, the court, therefore, expresses no opinion.

You are the sole judges of the credibility of the witnesses and the weight which is to be given to their testimony. A witness is presumed to speak the truth. This presumption, however, may be repealed by the manner in which he testifies, by the character of his testimony, or by evidence affecting his

reputation for truth, honesty and integrity or his motives or by contradictory evidence. In judging the credibility of the witnesses in this case, you may believe the whole or any part of the evidence of any witness or may disbelieve the whole or any part of it as may be dictated by your judgment as reasonable persons.

You should carefully scrutinize the testimony given, and in so doing consider all of the circumstances under which any witness has testified, his demeanor, his manner while on the stand, his intelligence, the relations which he bears to the plaintiff or the defendant, the manner in which he might be affected by the verdict and the extent to which he is contradicted or corroborated by other evidence, if at all, and every matter that tends reasonably to shed light upon his credibility.

A witness may be impeached by evidence that at other [765] times he has made statements inconsistent with his present testimony as to any matter material to the cause on trial.

A witness wilfully false in one material part of his testimony is to be distrusted in others. The jury may reject the whole of the testimony of a witness who has wilfully sworn falsely as to a material point; if you are convinced that a witness has stated what was untrue as to a material point, not as a result of mistake or inadvertence, but wilfully and with the design to deceive, then you may treat all of his or her testimony with distrust and suspicion, and reject all unless you shall be convinced

that he or she has in other particulars sworn to the truth.

You are instructed that it is the right and privilege of a defendant either to take the witness stand and testify, or to remain silent and not appear as a witness. When a defendant has become a witness and has testified, you are to estimate and determine his credibility in the same way as you would consider the testimony of any other witness.

As I pointed out to you at the beginning of this trial, the burden is upon the prosecution to prove a defendant guilty beyond a reasonable doubt of every essential element of the crime charged. The law does not impose upon a defendant the duty of producing any evidence. A reasonable doubt may arise not only from the evidence produced but also from lack of evidence. A reasonable doubt, ladies and gentlemen, is just [766] such a doubt as the term implies. It is a doubt for which you can give a reason. It must not arise from any merciful disposition or kindly, sympathetic feeling or desire to avoid performing a possibly disagreeable duty. It must be a substantial doubt such as an honest, sensible, fair-minded man might, with reason, entertain consistently with a conscientious desire to ascertain the truth and to perform a duty. It is such a doubt as would cause a man of ordinary prudence, sensibility and decision, in determining an issue of great concern to himself, to pause or hesitate in arriving at his conclusion. It is a doubt which is created by the want of evidence or maybe by the evidence

itself. It is not, however, a speculative, imaginary or conjectural doubt.

It is not incumbent upon the Government in the trial of a criminal case to prove the defendant guilty beyond all possibility of doubt because that would be impossible. A juror is satisfied beyond a reasonable doubt when he is convinced to a moral certainty of the guilt of the party charged.

I further instruct you that prior investigation to determine civil liability in order that the Government may assess and collect the taxes before the collection is jeopardized in any way does not preclude the Government from instituting further investigation and ultimately bringing criminal charges in connection with the same tax delinquencies.

The importance of your duties as jurors requires that [767] you consider the right of the Government of the United States to have its laws properly executed, and that it is with you citizens selected from this district that finally rests the duty of determining the guilt or innocence of those accused of crime, and unless you do your duty you might just as well strike the laws from the statute books.

I am now going to instruct you on the question of your treatment of the so-called character or reputation evidence. Evidence of good character is regarded by the law as relevant to the question whether a defendant is innocent or guilty of the crime charged because the jury may, if its judgment so directs, reason that it is improbable that a person of good character in such respects would have conducted himself as alleged. Evidence of

good character may be sufficient to raise a reasonable doubt whether or not the defendant is guilty, which doubt otherwise would not exist.

At the beginning of a criminal case, the character of an accused is not presumed to be either good or bad. The character of a defendant cannot become a subject of testimony by Government witnesses until a defendant has placed his character in issue by offering evidence of his good character as part of his defense. Therefore, the Government is entitled to offer evidence of bad character, to rebut the testimony offered by the defendant as to his good character.

In weighing the testimony of witnesses called by the [768] defense and the prosecution as to the reputation of the defendant, you are to consider primarily, on the issue of reputation, the general reputation in the community. It is for you to decide the weight to be given to the testimony of the various character witnesses. You may, if you see fit, reject the testimony of any witness who in your judgment has not had an adequate opportunity for knowing the reputation of the defendant's character. Testimony of reputation for good character may be based upon the fact that a witness has not heard the defendant's character questioned. Testimony of reputation for bad character, on the other hand, must be based on affirmative knowledge.

As I have said, evidence of good character may be sufficient to raise a reasonable doubt as to whether or not a defendant is guilty, which doubt otherwise would not exist. Evidence of bad character as to a

defendant may be considered by you to rebut the testimony offered by such defendant as to his good character. Such evidence as to bad character does not relieve the prosecution of its burden of proving beyond a reasonable doubt by affirmative evidence each and every essential element of the offense charged.

However, if, after weighing all the evidence in the case, you are convinced beyond a reasonable doubt that the defendant is guilty of the crimes charged against him in the indictment, your duty will be to find him guilty, notwithstanding the testimony that he was a person of good character. [769]

You are to remember throughout your deliberations that the defendant is entitled to the individual judgment of each juror. The verdict must represent the considered judgment of each one of you. In order to return a verdict, it is necessary that each juror agree thereto as to each count in the indictment. Your verdict as to each count must be unanimous.

It is your duty, as jurors, to consult with one another and to deliberate with a view to reaching an agreement, if you can do so without violence to individual judgment. Each of you must decide the case for yourself, but do so only after an impartial consideration of the evidence with your fellow jurors. In the course of your deliberations, do not hesitate to re-examine your own views and change your opinion if convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of evidence solely because of the opinion of

your fellow jurors, or for the mere purpose of returning a verdict.

The attitude of jurors at the outset of their deliberations is important. It is seldom helpful for a juror, upon entering the jury room, to announce an emphatic opinion on the case or a determination to stand for a certain verdict. When a juror does that at the outset, individual pride may become involved, and the juror may later hesitate to recede from an announced position even when shown it is incorrect. You are [770] not partisans. You are judges—judges of the facts. Your sole interest is to ascertain the truth from the evidence in the case. You will make a worthwhile contribution to the administration of justice if you arrive at an impartial verdict in this case.

There is nothing peculiarly different in the way a jury is to consider the proof in a criminal case from that in which all reasonable persons treat any question depending upon evidence presented to them. You are expected to use your good sense; consider the evidence for only those purposes for which it has been admitted and give it a reasonable and fair construction.

Bear in mind at all times that it would be a violation of your sworn duty to base a verdict upon anything but the evidence in the case.

If the accused be proved guilty, say so. If not proved guilty, say so. Remember at all times that a defendant is entitled to acquittal if any reasonable doubt remains in your minds.

Remember also the question before you can never be, will the Government win or lose the case? The Government always wins when justice is done, regardless of whether the verdict be guilty or not guilty.

When you retire to your jury room to deliberate, you will select one of your number as foreman who will represent [771] you as your spokesman in the future conduct of this case in this court. If it becomes necessary during your deliberations to communicate with the court, do not indicate in any manner how the jury stands numerically or otherwise. When you have agreed upon your verdict, the same will be signed by your foreman and you will return such verdict into the court. A form of verdict has been prepared and may be taken with you. There are, as I have explained, twelve counts, and as to each count the foreman will write in the verdict of the jury the words either guilty or not guilty as to each count. You may also take to the jury room with you a copy of the original indictment in this case and all of the exhibits which have been received in evidence. From this time until further order of the court, it is necessary that you remain together in a body. Bailiffs will be sworn to attend you and you will not communicate with anyone except with the court through the bailiffs until further order of the court.

Mr. Hoddick, are there any objections as to the instructions given by the court other than those noted in chambers yesterday?

Mr. Hoddick: Yes, your Honor, there are and

probably we would like to have the opportunity to present them.

The Court: Will this take very long?

Mr. Hoddick: No, your Honor.

The Court: Ladies and gentlemen of the jury, will [772] you all just stand out in the corridor and gather in a body for just a few minutes with the bailiff.

(Jury leaves courtroom at 11:15 a.m.)

The Court: Will you state which instructions?

Mr. Hoddick: May it please the court, so there won't be any question of compliance with the rule, may I simply note the numbers of the instructions which were either refused and to which we objected to the refusal, or given and we objected to the giving? The defendant objects to the refusal of the court to give Instruction Numbers 1 through 12, Numbers 14, 15. These are Defendant's suggested instructions. One through twelve, fourteen, fifteen, twenty-seven, twenty-eight, twenty-nine, thirty, thirty-one, to the modification of Number 35, the refusal to give 36, 37, 38, 39, 40, 41, 42, 43, 45, 46, 49 and 54. And to the giving of Plaintiff's Instruction Number 7 as modified by the court, Numbers 11, 18 and 22, on the grounds that they are contrary to the law applicable and principally in tax cases.

Your Honor, on Instruction Number 7 of the Plaintiff, we object to the modification. First we object to the instruction as submitted and we object to the modification as given by the court on the grounds that the court gave the general instruction

on the subject of intent which is applicable to criminal cases generally such as larcenies, or assault and battery. If a person intends the natural and probable consequence [773] of his acts, and that is the criminal intent involved. We submit that in tax cases the intent necessarily must have the evil purpose, bad purpose and evil motive. The court did not give the language from the Forester case emphasizing the evil purpose and the bad motive which must exist in the intent of a tax case. It is not simply a knowing violation of the law. We would further point out that—

The Court: Just one moment on that, Mr. Hoddick. Do you have a copy of your instructions on wilfulness? Mine is in my chambers. Or if you have the Forester case—oh, you returned that to me?

Mr. Hoddick: Yes, I did, your Honor. The point we make is the distinction between standard criminal cases—

The Court: Well, I propose to rectify that and I will do so.

Mr. Hoddick: One of the instructions on that score was the defendant's proposed Instruction Number 1. (Handing the document to the court.)

The Court: Well, now in other words, the omission of the bad faith and evil motive in the definition of wilfulness, that is what you primarily have in mind?

Mr. Hoddick: Your Honor, it goes a little bit further than that. In your giving of the modified instruction on wilfulness in connection with the felony counts, you specifically instructed the jury

that motive played no part, and then [774] later on in giving Defendant's Instruction Number 39 you told them that motive was something for them to consider. We submit, of course, that motive in a tax case is a basic ingredient that they should consider, so we object to its exclusion from the instruction given by the court on wilfulness.

The Court: Wait a minute. I said motive is immaterial except as evidence of motive may aid determination of the issue as to intent, which I think is correct.

Mr. Hoddick: Well, we interpret the Forester case as requiring a showing of evil motive and also in mind the Spies case.

The Court: Well, I will take care of that oversight, including the bad faith and evil motive, by supplementing the instructions and reading the following and listening carefully from the Forester case, and this will apply to the even counts:

"An act is done wilfully if done voluntarily and purposely and with a specific intent to do that which the law forbids. Wilfulness implies bad faith and an evil motive."

Mr. Hoddick: Your Honor, may the record be clear that this is an instruction which should, we feel, also be given as to the definition of wilfulness in connection with odd counts.

The Court: Yes, that will so show.

Mr. Hoddick: Also, your Honor, we want to note our objection to the court's failure to give Defendant's Requested [775] Instruction Number 25 which we had understood was going to be given.

The Court: May I see your copy? (Document handed to the court.) I think I did give that in substance. This is not what you would call an income tax violation case, is it?

Mr. Hoddick: Well, it is a tax violation case. I followed each of the instructions that had been submitted at the time the court read them, and the point, of course, in that is that in the tax case they are not supposed to have any doubts. That is the Forester case decision.

The Court: Well, I don't know that Judge Chambers went into the definition of reasonable doubt. Is there any objection to the definition of reasonable doubt as given?

Mr. Hoddick: Well, we think in the light of the Forester decision the burden is still heavier in a tax matter.

The Court: Well, when I said I was going to give this in substance, I think that I did. But you may for the record have your objection to my refusal to give it.

Mr. Hoddick: In the form in which it is submitted.

The Court: Yes. Now, so that there may be no question, is there anything that you want to add?

Mr. Hoddick: May I have just a moment?

The Court: Yes.

Mr. Crumpacker: Your Honor, on that subject, I would suggest or ask that both definitions be read again so [776] there wouldn't be any unbalance in the thing and also I noted that by inadvertence

apparently the court misread when reading that instruction, one of the counts. It is only a technical error but just to clear that up so there won't be any confusion, in reading the definition of wilful as to the odd counts, as I recall the court stated counts one, three, five, eight, nine and ten and eleven. I think it was just an inadvertence. But at least for the record probably the court should clear it up. I don't think it confused them at all. But perhaps as long as the court is reinstructing on others—

The Court: I am not worried about that. It was an oversight because I think the jury understands by this time the different types of offenses. Does that take care of it, Mr. Hoddick?

Mr. Hoddick: Yes, your Honor.

(Jury recalled to the courtroom at 11:28 a.m.)

The Court: Ladies and gentlemen of the jury, counsel for the defendant have called to my attention an oversight in my instructions concerning the definition of wilfulness or doing something wilfully which, as you know by now, is a very important element in this case. So I am going to supplement my instructions in this manner and perhaps it will clarify it for you. And this is a supplemental instruction. In other words, an addition, except for this repetition. The word [777] "wilful" as used in counts 1, 3, 5, 7, 9, and 11, that is, failing to make a tax return, means with a bad purpose or without grounds for believing that one's act is lawful or without reasonable cause or capriciously or with a careless disregard whether one has the right so to

act. With regard to the other counts, 2, 4, 6, 8, 10 and 12, I supplement my instructions on the definition of wilful in the following language: An act is done wilfully if done voluntarily and purposely and with a specific intent to do that which the law forbids. Wilfulness implies a bad faith and an evil motive. Does that cover it, Mr. Hoddick?

Mr. Hoddick: As to that instruction?

The Court: Yes.

Mr. Hoddick: Yes.

The Court: Mr. Clerk, will you swear the bailiffs?

(Bailiffs sworn in to take charge of jury.)

The Court: The jury will retire to the jury room to conduct its deliberations, and the form of the verdict and the indictment and the exhibits will be brought up to you.

(Jury leaves courtroom for its deliberations at 11:32 a.m.)

The Court: I don't know whether counsel for the defense in this case are like Mr. Soares or not but every time I tell him that if he wishes to leave the court house he may do so so long as he is available in a short time, and his response always is that I will stay here until the verdict is [778] returned. But if you wish to go to your offices, and we have your telephone numbers, just so that you are available in a short time, you may do so.

Mr. Hoddick: Thank you, your Honor. And so that the record will be clear, your Honor, may it

reflect that our acceptance of the court's modification of Plaintiff's Instruction Number 7 as to the definition of wilfulness in connection with felony counts does not constitute a waiver on our part of the specific instruction we submitted on wilfulness.

The Court: Yes, the record will so show. The court will stand at recess awaiting the verdict of the jury.

(The court recessed.)

(The court convened with the jury present at 2:33 p.m.)

The Court: The record will show the jury is present, the defendant and his counsel. Mr. Zane, I have a message from you in which you state, "May we have a copy of your instructions or examination. If not, will you please read your instructions to us once more."

Unfortunately I have made notations and deletions on the instructions, on some of them that I read to you, and would prefer not to give you anything but a clean copy of the entire instructions. I am wondering if you are desirous of having the entire instructions read again or were there certain portions that you discussed during your deliberations?

Mr. Zane: Your Honor, certain members of the jury [779] are confused. They would like the words "intent" and "motive" discussed.

The Court: I thought that perhaps was your problem, and you may be seated, Mr. Zane. And as a result of that I called in counsel for the parties

and we have gone over it and we have tried to present that problem to you in a clearer fashion. Was there any discussion or question raised about burden of proof, presumption of innocence, credibility of witnesses, how you are to treat the evidence and that sort of thing?

Mr. Zane: No.

The Court: Primarily on the question of what is wilfulness?

Mr. Zane That's right.

The Court: As used in this case. I think, then, this instruction will answer your inquiry. I will read it and see if it does.

You will note that counts 1, 3, 5, 7, 9 and 11 charge the defendant with wilfully and knowingly failing to make quarterly Federal tax returns to the District Director; and counts 2, 4, 6, 8, 10 and 12 charge the defendant with wilfully failing to truthfully account for and pay over to the Director the taxes when such returns were required to be filed. The types of wilfulness involved in these two different charges are separate and distinct and I ask you to pay particular attention to me when I describe to you just what is meant in each instance. [780] Now we are getting down to what you had in mind?

Mr. Zane: Yes.

The Court: The word "wilful" as used in counts 1, 3, 5, 7, 9 and 11, that is, failing to make a tax return, means with a bad purpose or without grounds for believing that one's act is lawful or without reasonable cause, or capriciously or with a careless

disregard whether one has the right so to act. The word "wilful" as used in counts 2, 4, 6, 8, 10 and 12, that is, in failing to truthfully account for and pay over the taxes, means with knowledge of one's obligation to pay the taxes due and with intent to defraud the Government of that tax by any affirmative conduct. Further, with respect to these counts, wilfulness implies bad faith and an evil motive.

Mr. Zane: One of the members expressed a desire to have a copy of that.

The Court: I am reluctant, Mr. Zane, to give to the jury only one instruction because, as I advised you, the instructions must be considered in their entirety and you should not single out any particular instruction. However, I can see your problem here, because of the different definitions of "wilfulness" as to the different counts.

Do counsel for either side have any objection to the court furnishing the jury under the circumstance a clean copy of this instruction?

Mr. Hoddick: May it please the court, for the defendant [781] our basic position is that if the jury is going to have the instruction it should have all the instructions. And in this connection with this particular instruction, they should also have our requested instruction Number 35.

The Court: Well, there is the problem we get into, ladies and gentlemen. And it is perfectly proper. Mr. Hoddick is not trying to hold back anything from you nor is the Government nor am I. Supposing I read that to you once again. I will read it carefully and slowly and then you go back to your

jury room. If you want me to read it again, I will do so late in the day. And I will start with this portion of it. The types of wilfulness involved in these two different charges are separate and distinct and I ask you to pay particular attention to me when I describe to you what is meant in each instance. The word "wilful" as used in counts 1, 3, 5, 7, 9 and 11, that is, in failing to make a tax return, means with a bad purpose or without grounds for believing that one's act is lawful, or without reasonable cause, or capriciously or with a careless disregard whether one has the right so to act.

The word "wilful" as used in the remaining counts, that is, in failing to truthfully account for and pay over the taxes, means with knowledge of one's obligation to pay the taxes due and with intent to defraud the Government of that tax by any affirmative conduct.

Further, with respect to these counts, wilfulness implies [782] bad faith and an evil motive.

Is there anything further you desire to have at this time?

Mr. Zane: That's all, your Honor.

The Court: Very well. You may retire to your jury room.

(Jury leaves courtroom at 2:45 p.m.)

Mr. Hoddick: Your Honor, for the record we object to the giving of the last instruction to the jury insofar as it differentiated between what constituted motives in misdemeanor situations and in felony situations. And we request that that differen-

tiation having been accentuated by this instruction standing alone, that the court should also give to the jury Defendant's Instruction Number 35 which was heretofore given as a companion instruction.

The Court: I am not satisfied that it is necessary under the circumstance, Mr. Hoddick. Your objection will be noted for the record. The court will stand at recess awaiting further word from the jury.

(The court recessed.)

(The court reconvened at 8:50 p.m. with the the jury present.)

The Court: The record will show the jury is present, the defendant and his counsel. Mr. Zane, I have a message from you, that a few members of the jury would like to have you read over the instructions again as to the word "wilful" [783] pertaining to counts 2, 4, 6, 8, 10 and 12. Is that correct?

Mr. Zane: That's correct.

The Court: And I will comply with your request. The word "wilful" as used in counts 2, 4, 6, 8, 10 and 12, that is, in failing to truthfully account for and pay over the taxes means with knowledge of one's obligations to pay the taxes due and with intent to defraud the Government of that tax by any affirmative conduct. Further, with respect to these counts, wilfulness implies bad faith and an evil motive. Shall I read it again?

A Juror: Once more.

The Court: Very well. The word "wilful" as

used in counts 2, 4, 6, 8, 10 and 12, that is, in failing to truthfully account for and pay over the taxes, means with knowledge of one's obligations to pay the taxes due and with intent to defraud the Government by any affirmative conduct. Further, with respect to these counts, wilfulness implies bad faith and an evil motive. Very well. You may return to the jury room.

(Jury leaves courtroom at 8:53 p.m.)

Mr. Hoddick: Your Honor, may the record again reflect the defendant's objection to the differentiation emphatically drawn to the juror's attention by giving this instruction solely with reference to the even numbered counts. And also we note an objection, we feel the instruction is incomplete in the failure of the court to also give [784] Defendant's Requested Instruction Number 35 along with it.

The Court: Yes, the record will so show. The Court will stand at recess.

(The court recessed.)

(The court reconvened with the jury present at 9:18 p.m.)

The Court: The record will show the jury is present, the defendant and his counsel. Mr. Zane, I have word through the bailiff that the jury have reached a verdict.

Mr. Zane: That's correct, your Honor.

The Court: Will you please hand the verdict to the clerk. (Foreman hands verdict to the clerk and

same is handed to the court.) Mr. Clerk will you read the verdict?

The Clerk: United States of America, Plaintiff, versus Daniel L. Abdul, Defendant. Verdict. We, the jury, duly impaneled and sworn, in the above-entitled cause, do hereby find the defendant Daniel L. Abdul as to count 1, guilty; as to count 2, not guilty; as to count 3, guilty; as to count 4, not guilty; as to count 5, guilty; as to count 6, not guilty; as to count 7, guilty; as to count 8, not guilty; as to count 9, guilty, as to count 10, not guilty; as to count 11, guilty; as to count 12, not guilty; as charged in the indictment herein. Dated Honolulu, T. H., this 5th day of December, 1956. Signed James C. Zane, foreman.

The Court: The verdict will be received and filed. Ladies and gentlemen of the jury, you have deliberated a long [785] period of time on the evidence and the law in this case, and it has not been an easy task on your part. The complexity of the evidence and the law involved required deliberation and I am grateful to each and every one of you for the time that you have spent on it. I think that your verdict represents the result of careful deliberation. Do you have another jury trial set, Mr. Clerk?

The Clerk: Not until the first of the year, your Honor.

The Court: Very well. For the eleven of you who have never served on a jury before, I am certain that it has been an interesting experience and I hope that you will be back again soon to sit in a similiar capacity. I do not believe that we have any jury trials set between now and the 1st of January.

The Clerk: It is on the 7th.

The Court: The 7th, which will be next year. So in addition to thanking you for your services in this case, I am going to take this opportunity although it is a bit early, to wish you all a very Merry Christmas and a Happy New Year, and you are excused subject to call by the clerk of the court.

(Jury leaves courtroom at 9:23 p.m.)

The Court: The defendant will be referred to the Probation Office for a pre-sentence investigation and report, and the matter of sentence will be set down after the court has received that report. [786]

Mr. Hoddick: Your Honor, it does not require in a Federal court under the present rule that the defendant does note an exception but the defendant does note an exception that the verdict is contrary to the law and the evidence and at this time renews the motion made at the close of the Government's case and which was again renewed at the close of the case for a judgment of acquittal by the court as to the counts on which the jury has returned a verdict of guilty. It would be my understanding that the court or it has been my understanding that the court has reserved ruling on that motion.

The Court: Yes. That is correct. And I think that the facts and the law are clear enough, Mr. Hoddick, so it will not require additional argument on that motion, and the motion will be denied. The court will adjourn until nine o'clock tomorrow morning.

(The court adjourned at 9:23 p.m.) [787]

We, Albert Grain and Elbert Cripps, Official Court Reporters, do hereby certify as follows: That we reported Criminal Case Number 11,072, United States of America, Plaintiff, versus Daniel L. Abdul, Defendant, a case in the United States District Court for the District of Hawaii, commencing on November 26, 1956, and continuing through December 5, 1956; that the foregoing transcript of said proceedings is true and correct.

April 9, 1957.

/s/ ALBERT GRAIN.

April 9, 1957.

/s/ ELBERT CRIPPS.

[Endorsed]: Filed April 10, 1957. [788]

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[Title of District Court and Cause.]

#### DOCKET ENTRIES

1956

Aug. 16—Indictment filed.

Aug. 16—Entering order to issue summons returnable Aug. 20, 1956 at 10 a.m.

Aug. 17—Summons issued with copy for service.

Aug. 17—Marshal's returns filed (served).

Aug. 20—Entering proceedings at arraignment, waived. Continued to Sept. 10, 1956, at 8:45 a.m. for plea or to file motions, etc. Assigned to Judge Jon Wiig for fur-

1956

ther proceedings by Judge J. Frank McLaughlin.

Sept. 7—Motion for inspection of Documents, Affidavit, Memorandum of Points and Authorities in Support of Motion for Inspection of Documents and Notice of Motion filed.

Sept. 14—Entering proceedings at hearing on motion and for plea. Court advised that copies have been supplied and government has no objections to inspection, etc.

Sept. 14—Requests continuance for plea. Continued to Sept. 21, 1956, at 10 a.m. for plea.

Sept. 21—Entering proceedings at plea. Plea Not Guilty entered to Counts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 & 12.

Sept. 21—Set for trial November 26, 1956, at 10 a.m.

Nov. 21—5 blank subpoenas with copies issued to U. S. Attorney.

Nov. 26—Marshal's returns to subpoenas filed (served).

Nov. 26—Defendant's Suggested Questions for Voir Dire Examinations submitted to Court.

Nov. 26—Entering proceedings at Trial. Jury empaneled and Sworn. Opening statement by Crumpacker. Defense statement reserved. Witness: (Plaintiff) James Williams, Howard H. K. Mew. Exh. (Plaintiff) Nos. 1 to 21, incl., marked for ident. 4 p.m. Adjourned to 9 a.m. November 27,

1956

1956, for further trial—Jurors admonished.

Nov. 27—Entering proceedings at further trial—  
Jurors, Defendant and Counsel present—  
Witnesses: (Plaintiff) Howard H. K.  
Mew, Susan Spidell, Katsuyoshi Wata-  
nabe—Exhibits (Plaint.) Nos. 1, 2, 3, 4, 5,  
7, 8, 9, 10, 11, 12 & 14 Admitted—4 p.m.  
Adjourned to 9 a.m. November 28, 1956—  
Jurors Admonished.

Nov. 28—Entering proceedings at further trial—  
Jurors, Defendant and Counsel present—  
Witnesses: (Plaint.) Katsuyoshi Wata-  
nabe, Janet Yamamoto and Marion Burns  
—Exhibits (Plaint.) No. 13 admitted—  
12:01 p.m. adjourned to 9 a.m. November  
29, 1956, for further trial—Jurors Ad-  
monished.

Nov. 29—Entering proceedings at further trial—  
Jurors, Defendant and Counsel present—  
Witnesses: Jimmy Walker (Motion for  
entry mistrial—denied), George D. Strat-  
ton, Caroline Moyer, Kunishi Murata,  
Clarence K. Karimoto, Raymond A. Fiel-  
lin (Plaint.) Exhibits: (Plaint.) 15, 16,  
17, 18, 19, 21, 22, & 23 admitted No. 24 for  
Ident. (Deft.) A, B-1 to 15, incl., C, D,  
E, F, & G—Admitted—4 p.m. Adjourned  
to 9 a.m. November 30, 1956—Jurors Ad-  
monished.

1956

Nov. 29—1 blank subpoena issued with copy (Defense).

Nov. 29—2 blank subpoenas issued with copy (Plaintiff).

Nov. 30—Entering proceedings at further trial—  
Jurors, defendant and Counsel present—  
Witnesses: (Plaint.) Raymond A. Fiellin  
—Exhibits: (Plaint.) No. 28 admitted—  
10:14 a.m. Plaintiff Rests—Motion for  
judgment of acquittal—Jurors withdrawn  
—Argument by Felzer and Crumpacker—  
Ruling reserved—Jurors returned—De-  
fense Statement by Hoddick—Witnesses:  
(Defense) Catherine Y. Abdul, Daniel L.  
Abdul, George Vernon Tharp, Francis  
Wilder Wight, Thomas L. Crosby—Ex-  
hibits: (Deft.) H, for Ident. 4:04 p.m.  
Adjourned to December 3, 1956, at 9 a.m.  
for further trial—Jurors admonished.

Nov. 30—Marshal's returns to subpoenas filed;  
served.

Dec. 3—5 blank subpoenas with copies issued  
(Plaint.)

Dec. 3—Entering proceedings at further trial—  
Jurors, Defendant and Counsel present—  
Witnesses: (Defense) Daniel L. Abdul—  
Exhibits: (Plaint.) No. 24 admitted—  
No. 29 Ident. (Deft.) H admitted;  
3:25 p.m. Defense Rests—Discussions by

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Court and counsel—3:39 Adjourned to 9 a.m. December 4, 1956, for further trial Jurors admonished. Marshal's returns to subpoenas filed (served).

**Dec. 4**—Entering proceedings at further trial—  
Jurors, Defendant and Counsel present—  
Witnesses: (Rebuttal) George D. Stratton, Samuel Landau, Mildred Sawtelle, Thomas C. Major—9:45 a.m., Both Sides rest—Defense requests ruling on motion for judgment of acquittal—Ruling reserved—Motion by Felzer to dismiss Counts 2, 4, 6, 8, & 10—denied—9:48 a.m., Jurors admonished and excused to 11 a.m. and further excused to 2 p.m.—Settlement of Instructions (in chambers—Court and Counsel). Defense submits 54 requested and Plaintiff 22—2:50 p.m. Jurors, Defendant and Counsel present—Opening argument by Crumpacker, 3:55 p.m. Adjourned to 9 a.m. December 5, 1956, for further trial—Jurors admonished.

**Dec. 5**—Entering Proceedings at further trial—  
Jurors, Defendant and Counsel present—  
Defense Argument by Hawkins—9:40 a.m.  
Closing argument by Crumpacker—  
10:30 a.m. Court's Instructions to Jury.  
11:15 a.m. Jurors withdrawn for exceptions, etc.—Exceptions by Hoddick—

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11:27 a.m. Jurors returned—Court's further instructions—Titcomb and Osmers sworn and Case to Jury—2:30 p.m. Jurors returned and further instructed—2:45 p.m. Returned to Petit Jury Room to further deliberate—Objections by Hoddick to Court's instructions, etc.—8:50 p.m. Jurors returned and further instructed—8:53 p.m. Jurors returned to Petit Jury Room to further deliberate—Exceptions by Hoddick—9:19 p.m. Jurors, Defendant and Counsel present—Verdict—Counts 1, 3, 5, 7, 9, 11 Guilty; Counts 2, 4, 6, 8, 10 & 12 Not Guilty. To report to Probation office for investigation and report—Sentence to be scheduled after receipt of report—Hoddick renews motion for Judgment of Acquittal and for Court's ruling—Motion denied.

Instructions filed:

Verdict filed: Counts 1, 3, 5, 7, 9 & 11 Guilty. Counts 2, 4, 6, 8, 10 & 12 Not Guilty—WIIG

Dec. 14—Motion for New Trial—Memorandum of Points and Authorities and Notice of Motion filed.

Dec. 27—Entering proceedings at hearing on Motion for new trial—Arguments by Felzer and Crumpacker—Motion for New Trial—denied—continued for sentence.

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Jan. 11—Entering proceedings at sentence—Count 1—Imp. 1 year; Count 5—Imp. 1 year; Count 9—Imp. 1 year; to run concurrently; to pay costs of prosescution. Count 3—Imp. 6 months; Count 7—Imp. 6 months; Count 11—Imp. 6 months; to run concurrently; Counts 3, 7 & 11 imprisonment to run consecutively with Counts 1, 5 & 9. Mittimus stayed to noon January 14, 1957, upon request of defense. Judgement and Commitment filed—WIIG.

Jan. 14—Notice of Appeal filed:

Entering proceedings (in chambers) on matter of supersedeas bond on appeal—Crumpacker recommends that bond be set at \$5,000.00—Bond set at \$5,000.00—Court will approve bond with Defendant and wife as sureties supported by real property owned by sureties. Form of Clerk's statement of docket entries under Rule IV airmailed to C.C.A. 9th Cir.

Jan. 14—Counsel advised by letter as to notice of appeal.

Jan. 14—Supersedeas Bond on Appeal filed.

Jan. 14—Appraisal Report filed.

Jan. 14—Copy of notice of lien filed.

Jan. 14—Reporter's transcript plea filed.

Jan. 22—Reporter's transcript sentence filed.

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Jan. 30—Plaintiff's Bill of Costs filed.

Feb. 21—Order extending time for filing record on appeal and designating appeal filed. McLaughlin.

April. 8—Designation of Record on Appeal filed (Deft.).  
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[Title of District Court and Cause.]

## CERTIFICATE OF CLERK

United States of America,

District of Hawaii—ss.

I, William F. Thompson, Jr., Clerk of the United States District Court for the District of Hawaii, do hereby certify that the foregoing record on appeal in the above-entitled cause, numbered from Page 1 to Page 115, consists of a statement of the names and addresses of the attorneys of record and of the various original pleadings, exhibits, and transcript of proceedings as hereinbelow listed and indicated:

Indictment.

Defendant's Requested Instructions Nos. 1-54.

Plaintiff's Requested Instructions, Nos. 1, 2, 3, 4, 5, 6, 7, 9, 11, 12, 13, 14, 15, 16, 18, and 22.

Court's Instructions Nos. 1, 2, and 3.

Communications between Court and Jury.

Verdict.

Motion for New Trial, Memorandum of Points and Authorities and Notice of Motion. Judgment and Commitment.

Notice of Appeal.

Supersedeas Bond on Appeal.

Bill of Costs.

Order Extending Time for Filing Record on Appeal and Designating Appeal.

Designation of Record on Appeal.

Transcript of Proceedings.

Plaintiff's Exhibits Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 26, 27, and 28.

Defendant's Exhibits "A," "B-1," to "B-15," inclusive, "C," "D," "E," "F," "G," and "H."

I further certify that included in said record on appeal is a copy of the Docket Entries. 110-112

In witness Whereof, I have hereunto set my hand and affixed the seal of said District Court, this 11th day of April, 1957.

[Seal] /s/ WM. F. THOMPSON, JR.,  
Clerk, U. S. District Court,  
District of Hawaii.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO SUPPLEMENTAL TRANSCRIPT OF RECORD ON APPEAL

United States of America,  
District of Hawaii—ss.

I, William F. Thompson, Jr., Clerk of the United States District Court for the District of Hawaii, do hereby certify that the foregoing supplemental record on appeal in the above-entitled cause, numbered from Page 1 to Page 5 consist of the following:

Plaintiff's Requested Instruction No. 8.

Plaintiff's Requested Instruction No. 10.

Designation of Additional Contents of Record on Appeal.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court, this 19th day of April, 1957.

[Seal] /s/ WM. F. THOMPSON, JR.,  
Clerk, U. S. District Court,  
District of Hawaii.

[Endorsed]: No. 15523. United States Court of Appeals for the Ninth Circuit. Daniel L. Abdul, Appellant. vs. United States of America, Appellee. Transcript of Record. Appeal from the United States District Court for the District of Hawaii.

Filed April 12, 1957.

Docketed: April 23, 1957.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for  
the Ninth Circuit.

In the United States Court of Appeals  
For the Ninth Circuit

No. 15523

DANIEL L. ABDUL,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

STATEMENT OF POINTS TO BE RELIED  
UPON ON APPEAL

Comes now Daniel L. Abdul, appellant in the above-entitled cause, by his attorney, Howard K. Hoddick, and pursuant to the provision of Rule 17 (6) of the Rules of Practice for the United States Court of Appeals for the Ninth Circuit, hereby states that the appellant in taking this appeal relies upon the following errors which were made by the District Court:

1. The giving of erroneous instructions defining the term "wilful" as used in the odd numbered counts of the indictment;
2. The giving of erroneous instructions defining the term "wilful" as used in the odd numbered counts of the indictment on three separate occasions and on two such occasions separately from the balance of the instructions so that this error was impressed on the minds of the jury;

3. The giving of Plaintiff's requested instruction No. 11 concerning the duty of an employer to keep detailed and accurate payroll records at a convenient and safe location accessible to Internal Revenue Officers and open for inspection at all times by such officers which had no application to this case;
4. The giving of Plaintiff's requested instruction No. 22 which was both emotional and prejudicial to the Appellant;
5. The failure to give Defendant's requested instruction No. 35 on two occasions when the jury requested additional instructions on the definition of the term "wilful";
6. The refusal and failure to give Defendant's requested instructions numbered 27, 28, 29, 30, 37, 38, 40, 41, 42, 44, 45, 46, 48, and 54;
7. Admitting into evidence irrelevant and immaterial testimony of the witness James Walker which was highly prejudicial and thereafter denying Defendant's motion to strike the same and in the alternative his motion for a mistrial;
8. Admitting into evidence Plaintiff's Exhibits Nos. 1, 3, 8, 18, 19;
9. Allowing the prosecutor to ask repeated questions of the defendant as to immaterial, irrelevant and collateral matters as matters which would reflect on Defendant's credibility but as to which Plaintiff offered no further proof;

## 10. The Denial of Defendant's Motion for a New Trial.

Dated at Honolulu, T. H., this 11th day of April, 1957.

DANIEL L. ABDUL,  
Appellant;

By /s/ HOWARD K. HODDICK,  
His Attorney.

Service of copy acknowledged.

[Endorsed]: Filed April 12, 1957.